

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Yellowtail, on March 19, 1993, at  
10:05 a.m.

#### **ROLL CALL**

**Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** NONE

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: HB 245  
HB 396  
HB 216  
Executive Action: NONE

#### **HEARING ON HB 216**

**Opening Statement by Sponsor:**

Representative Grady, District 47, told the Committee that HB 216 is an extension of legislation passed in the last session. The law disallows motor fuel marketers from selling gas below cost when the intent is to hinder competition or drive someone out of business. The original legislation came about in 1990 to look at the possible predatory pricing practices in Montana. Significant variations and margins between towns were selling fuel far less

than cost. Two pieces of legislation were recommended. One bill was the Motor Fuel Marketing Acts sponsored by Dorothy Bradley which passed in the 1991 session. The Motor Fuel Marketing Act had a sunset clause of July 1993. Rep. Grady told the Committee that there are two issues he is concerned with. One is the language that the House Business Committee struck in HB 216. The other is the law itself. The House Business Committee added another two year termination clause to HB 216. The Motor Fuel Marketing Act is needed because retail motor fuel marketing is a very competitive business, both in Montana and the United States. Competition is encouraged by the fact that there are very many sellers. The sellers are constantly working to maintain and increase their sale volumes. Unfortunately, some large companies have chosen the tactic of driving their competitors out of business, which limits the number of participants and allows for higher prices at gas pumps and higher profits for sellers.

#### Proponents' Testimony:

Steve Visocan, Visocan Petroleum, markets motor fuel in both the motor fuel and retail levels in Helena, Great Falls, Dillon, and Townsend. Mr. Visocan provided the Committee with a copy of HB 538, which is the Retail Motor Fuel Marketing Act. (Exhibit #1) HB 538 is the bill that needs to be amended. HB 216 came about because large marketers in Montana have been selling gas below cost in specific markets in order to drive competitors out of business. Section 4, of HB 538 talks about below cost sales being prohibited. Mr. Visocan read lines 18 through 23, page 1. "A wholesaler compared to a retailer may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition." HB 216 provides that retailers cannot sell motor fuel less than the delivered cost of the motor fuel. Delivered cost of the motor fuel is defined to be the cost the retailer paid for the fuel, the rack price paid to the terminal or refiner, the freight cost, state and local taxes, and the cost of doing business. Mr. Visocan said there are two areas of legal complexity which make the bill difficult to enforce. One area of complexity is how to determine the cost of doing business. The cost of doing business is defined in HB 538, on pages 2 and 3. The second area of complexity is proving injury to competition. HB 538 has been law for two years. HB 538 was needed and effective. Mr. Visocan urges support for HB 216.

Ronna Alexander, Petroleum Marketers Association, told the Committee she would address the language in HB 216. Ms. Alexander submitted a copy of the original draft of HB 216. (Exhibit #2) Since the enactment of the law, there was one actual case brought to court that was heard in Helena, Lewis and Clark County v. Gasamat. Judge Jeffrey Sherlock heard the case and dismissed it because the state failed to prove the effect of injury to competition. Ms. Alexander said that was due to vague

language in the law. Since the passage of HB 538, county attorneys have taken the attitude that the law was unenforceable and ineffective. Ms. Alexander submitted amendments (Exhibit #3) and a copy of Judge Sherlock's decision (Exhibit #4). Ms. Alexander said the first problem area had to do with injury to competition. Page 1, section 1, line 20, of the original bill, the word competitors was added. Competitors is tangible, because we know the competitors. Ms. Alexander said there were three parts in HB 216 that dealt with injury to competition. The word "competitors" needed to be added in all three parts. Ms. Alexander asked the Committee to support the amendments. Ms. Alexander told the Committee the sections deal with the retail sale of motor fuel, which would be the wholesalers selling to a retailer, a retailer selling their products, and a wholesaler selling to their own retail location. The second problem area deals with prima facia evidence. Page 4, of Judge Sherlock's decision, cites the Oklahoma law and the fact that Montana law lacks the statutory presumption of what was evidence of injury to competition. Therefore, on page 3 of the original draft of HB 216, language has been added which states: "Evidence of advertisement offering to sell or sale of motor fuel at less than cost is prima facia evidence of injury to competitors and competition. Ms. Alexander told the Committee there were 20 states that have laws similar to HB 216. Ms. Alexander submitted a list of those states. (Exhibit #5) Ms. Alexander urged support for HB 216.

Riley Johnson, Montana Federation of Independent Business, urged support for HB 216.

Mark Olson read from prepared testimony. (Exhibit #6)

Beth Baker, Department of Justice, told the Committee the Attorney General supported the Motor Fuel Marketing Act two years ago, on the grounds that it would help prevent unfair competition to the retail motor fuel industry. Ms. Baker said the Department of Justice supported the termination of the sunset clause because there was not enough experience with the law to know whether it works. Ms. Baker said the Department was not enforcing the act, but complaints are recorded.

**Opponents' Testimony:**

Senator Lynch, District 35, said HB 216 was not needed. Senator Lynch said one of the main issues of HB 216 was defining cost. Senator Lynch told the Committee the people he talked to said they could not live on 6%. Senator Lynch told the Committee that no other business has a guarantee of competition.

Janelle Fallen, Montana Petroleum Association, read from prepared testimony. (Exhibit #7)

Lorna Frank, Montana Farm Bureau, said an analysis of the impact of below cost selling on gasoline, showed Montana motorists paid

higher prices for gasoline since the enactment of HB 538 in 1991. Ms. Frank said the Farm Bureau firmly believed in the law of supply and demand and the free and open market. Therefore they opposed HB 216.

Candace Torgeson, Montana Stockgrowers Association, opposed HB 216.

William Dermott, Exxon Company, U.S.A., read from prepared testimony. (Exhibit #8) Mr. Dermott submitted an analysis of Exxon's study of the impact of HB 538. (Exhibit #9)

**Questions From Committee Members and Responses:**

Senator Doherty asked Mr. Visocan to analyze of Exxon's study. Mr. Visocan told the Committee said the study said the price had gone up in Montana, but the prices actually went down. Mr. Visocan submitted a copy of an analysis of the impact of below cost selling. (Exhibit #10)

Senator Doherty asked Mr. Dermott who paid for the study. Mr. Dermott replied that Exxon paid for the study.

Senator Doherty asked Mr. Dermott about the Lunberg survey. Mr. Dermott told the Committee the Lunberg Survey surveyed retail prices in Billings and Cheyenne, WY. They are an independent firm in Los Angeles. Mr. Dermott said it was their data, not Exxons.

Senator Rye asked Ms. Alexander which major oil companies do direct marketing in the state. Ms. Alexander replied Cenex and Gasamat.

Senator Rye asked Ms. Alexander if they were a member of the Petroleum Marketers Association. Ms. Alexander said no.

Senator Rye asked Ms. Alexander if Cenex or Gasamat was a major oil company. Ms. Alexander said Cenex would be considered a major oil company.

Senator Towe asked Mr. Dermott if the price of gasoline would go up. Mr. Dermott said Exxon does not base their prices, in Montana, on other states' prices. Mr. Dermott said Exxon sells to retailers at a rack price. Exxon is not in the position to sell below cost to the refiners.

Senator Towe asked Mr. Dermott what is wrong with the anti-trust concept of not allowing people to sell below market for the purpose of a come on or squeezing competitors out of business. Mr. Dermott said there is nothing wrong with the concept. We have anti-trust laws to benefit the consumer by encouraging competition. That was what the law was intended to do.

Senator Towe asked Mr. Dermott what was wrong with HB 216. Mr. Dermott said HB 216 shields individual competitors from the competitive process. Mr. Dermott said with the additional language, addressing individual competitors, would make it difficult for individuals to be aggressive in their operation because of the threat that someone could challenge their prices and take them to court. Mr. Dermott said that would stifle their willingness to compete.

Senator Bartlett asked Ms. Baker about the Lewis and Clark County v. Gasamat case. Ms. Baker told the Committee Wendy Wilson argued the case on the states behalf. Ms. Wilson was from the Lewis and Clark County Attorneys Office.

**Closing by Sponsor:**

Representative Grady said HB 216 would prevent companies from selling below cost. HB 216 would help keep small businesses in business. Representative Grady asked the Committee to amend HB 216 with the amendments Ms. Alexander proposed. Representative Grady urged the Committee to support HB 216.

**HEARING ON 245**

**Opening Statement by Sponsor:**

Rep. Kadas, District 55, told the Committee HB 245 had been known as a good cause bill. Currently people who own mobile homes generally have them sited at a mobile home court, which is generally owned by someone else. The person who owns the mobile home rents a space on the court in order to place their home. Under current law, the owner of a court could evict the mobile home owner for no reason. HB 245 would provide fairness and security to the mobile home owner. HB 245 would limit the reasons for which a mobile home court could evict a person from a mobile home court. One of the big reasons for doing that was because it is not a simple thing to move a mobile home. Generally, once a mobile home was sited, it would stay there for its effective lifetime. Moving a mobile home is an expensive process, usually around \$1,000. Therefore, it was not reasonable for a mobile home court owner to evict someone for no reason, and force someone to absorb all the cost associated with the move, for no good reason at all. Rep. Kadas HB 245 would help protect the mobile home owners. Rep. Kadas told the Committee that HB 245 had been through a lot of work and compromises. Rep. Kadas submitted amendments. (Exhibit #11) Rep. Kadas explained the amendments. Rep. Kadas said the amendments could be left out if the opponents did not agree. HB 245 gives five different reasons for evicting someone from a mobile home court. A person could be evicted for nonpayment of rent or late charges. If a person does not pay, the landlord would provide them with a notice. If a person does not pay within 15 days of the notice the person would be evicted. A person would be evicted if the person was habitual in their late payments of rent. If a person pays their rent late

three times in a 12 month period, the landlord could evict them. A person could be evicted if they violated the mobile home park rules. If a person violates a rule and does not alleviate the violation within 14 days of being notified of the rule violation, they would be evicted. If a person breaks a the same rule three times in a year they would be evicted. If a person breaks any rule three times in a year that would cause a significant adverse affect to the other people in the mobile home court, they would be evicted. A person could be evicted for disorderly conduct. Page 5, line 14 defines disorderly conduct. A person could be evicted if they were convicted of a federal, state, or local ordinance law that was detrimental to the health, safety, and welfare of the other residents, or if the landlord documented such a violation. A person could be evicted for a change in the use of the land, however, the landlord would have to give the occupants a six month notice. Rep. Kadas urged supported for HB 245.

**Proponents' Testimony:**

Bruce Hietela, resides at the Target Range Trailer Court, told the Committee the passage of HB 245 was critical to mobile home owners. Mr. Hietela urged support for HB 245.

Susan Gobbs, Montana Legal Services, told the Committee there were approximately 1,000 complaints a year from tenants who were evicted for no reason. HB 245 would address that problem and would give appropriate notice to landlords and tenants as to their rights and responsibilities. Ms. Gobbs urged support for HB 245.

Bea Steen read from prepared testimony. (Exhibit #12)

Leslie McBirnie read from prepared testimony. (Exhibit #13)

Alice Janke read from prepared testimony. (Exhibit #14)

Bill Olson, American Association of Retired Persons, read from prepared testimony. (Exhibit #15)

Ron McGraph, Co-Chairman for the Travios Village Association, submitted a document that represented the latest attempt by the management of the Travios Village to discredit and intimidate the members of their association. (Exhibit #16) Mr. McGraph urged the Committee to provide an immediate effective date upon the passage and approval of HB 245.

John Wymon, Great Falls Mobile Home Court Residents Association, urged the Committee to support SB 235.

Bob Chrestinsen, Lola, MT, told the Committee he was given an eviction notice because he joined a resident association. Mr. Chrestinsen said he was tired of being afraid to speak out about the problems in his court. Mr. Chrestinsen urged the Committee

to pass HB 245.

Stacey Jaffe, Target Range, asked the Committee to support SB 245. Mr. Jaffe told the Committee she was a battered women. Ms. Jaffe said she had to call the police one time, and the landowner told her if the police were called again she would be evicted.

Chet Kinsey, Montana Senior Citizens, Montana Low Income Coalition, supported HB 245.

Patrice Baldwin supported HB 245.

Cindy Moree submitted written testimony. (Exhibit #17)

Cheryl Burpee submitted written testimony. (Exhibit #18)

Nancy Collins submitted written testimony. (Exhibit #19)

Janet Salmonson supported HB 245.

**Opponents' Testimony:**

Mary McCue, read from prepared testimony. (Exhibit #20)

Gary Lenhardt, Operations Manager of Travois Village in Missoula, said since they purchased the mobile home court, \$19,000 has been used for repairs and improvements of the court. Mr. Lenhardt told the Committee that he makes frequent inspections of the court and has revised the rules that applied to the court. Mr. Lenhardt said many allegations against the Travois Village were taken out of context. Mr. Lenhardt encouraged the Committee to vote against HB 245.

Greg Van Horsen, Income Property Managers and Owners Association of Montana, Montana Landlords Association, read from prepared testimony. (Exhibit #21)

Terry Cosgrove read from prepared testimony. (Exhibit #22)

Tom Hopgood, Montana Association of Realtors, opposed HB 245.

Dan Wood, Montana Landlord Association, told the Committee HB 245 would be detrimental to the Landlord Association and to good businesses. Mr. Wood strongly urged the Committee for a DO NOT PASS recommendation.

Andy Skinner opposed SB 245.

Craig Draper submitted written testimony. (Exhibit #23) Mr. Draper also submitted petitions. (Exhibit #24)

Christopher Maedje read from prepared testimony. (Exhibit #25)

Ed Eaton opposed HB 245.

Stan Cauthier submitted written testimony. (Exhibit #26)

Cecil Walborn read from prepared testimony. (Exhibit #27)

Montana Watts read from prepared testimony. (Exhibit #28)

Robert Dunlop, Helena KOA, opposed HB 245.

Vicki Wine, Manager for the King Arthur Park, submitted a petition. (Exhibit #29)

**Questions From Committee Members and Responses:**

Senator Towe asked Mr. Parker about the rule violations. Mr. Parker said if a person broke three violations in a 12 month period they would be evicted. HB 245 was crafted after 28 states which had good cause eviction legislation.

Senator Doherty asked Ms. McCrue if she objected to the language that mirrors current language in the Montana Tenant Act. Ms. McCrue said no.

Senator Doherty asked Ms. McCrue about her objections to HB 245. Ms. McCrue said mobile home owners were protected under current law. If a landlord evicts a tenant for no reason, the tenant could bring the landlord to court. Landlords have to provide utilities, keep the parks habitable, clean, and safe, and if they do not they could be subject to a lawsuit.

Senator Franklin asked Mr. Parker about the number of people who were being evicted. Mr. Parker said less than 1% of tenants were being evicted from courts and less than 1% of the owners were problem owners. Mr. Parker said the problem was not the number of people who were being evicted, the problem was that Montana does not have a good cause provision. Mr. Parker said without a good cause provision, tenants were threatened with an eviction if they complained about the court. Mr. Parker told the Committee that Montana needed a law that had a reason for eviction, without it people would be left open to threats.

**Closing by Sponsor:**

Representative Kadas closed.

**HEARING ON HB 396**

**Opening Statement by Sponsor:**

Representative Whalen, District 93, said HB 396 would provide that information, with regard to a violation of the implied consent statute, would remain confidential criminal justice information until there was a DUI conviction. HB 396 would also amend the insurance statute to say a violation of the implied consent statute could not be used for the purpose of setting



insurance rates.

**Proponents' Testimony:**

NONE

**Opponents' Testimony:**

Greg Van Horsen, State Farm Insurance Company, said HB 396 would govern the way insurers would do business. HB 396 would tell insurers they could not consider certain pertinent information in setting their rates. Insurers insure risk. The more frequently a person violates a law, the higher risk the individual represents. The implied consent law provides that a person must consent to an alcohol test if driving on Montana's highways. If the person chooses not to submit to the test, they would be showing disregard to the law and an intent to violate the law. Mr. Van Horssen said the legislature should not prohibit insurers from taking the violations of the law into account when assigning risks and setting premiums. HB 396 encourages drivers to violate the implied consent law and removes an incentive to remain sober while driving on Montana highways. Mr. Van Horsen said HB 396 represents bad public policy, therefore urged the Committee to oppose HB 396.

Jacqueline Lenmark, American Insurance Association, opposed HB 396. The passage of HB 396 would impact rates for all Montanans. Ms. Lenmark urged the Committee to oppose HB 396.

Peter Funk, Attorney Generals Office, urged the Committee to think about the public policy aspect of making that kind of restriction on insurance rating. Mr. Funk said the Attorney Generals Office opposed the amendments that were included by the House Judiciary Committee. HB 396 links a DUI conviction with an implied consent test refusal. However, there was no link ever between the implied consent scheme and the subsequent criminal prosecution for DUI, which may have occurred at the same time as the test requirement. Mr. Funk urged the Committee not to upset, what is a very clearly recognized legal principle, by linking the test refusal with an ultimate conviction.

**Questions From Committee Members and Responses:**

Senator Towe asked Rep. Whalen to comment on Mr. Funk's statement. Rep. Whalen told the Committee he would not oppose taking off the amendments that were included in the House.

Senator Towe asked Mr. Van Horssen why rates should be increased if a person refused to take an alcohol test. Mr. Van Horsen said an individual violates the driving laws of Montana if they refuse to submit to an alcohol test, therefore they represent an increased risk.

Senator Towe asked Mr. Van Horsen about refusing the alcohol

test. Mr. Van Horsen said it was State Farm's position that the individual who does not choose to take the alcohol test, willfully chooses not to comply with the implied consent statute. Mr. Van Horsen said statistics has shown that if the individual refused to comply with the implied consent statute, the individual would represent an increased risk.

**Closing by Sponsor:**

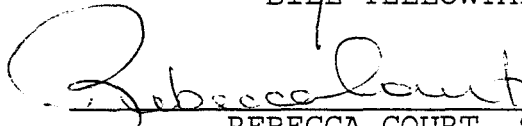
Representative Whalen urged the Committee to favorably consider HB 396.

**ADJOURNMENT**

Adjournment: 12:05 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE JUDICIARY

REPORT NO. 1

DATE 3-19-93

BILL NO. 113216

52nd Legislature

HB 0538/04

HB 0538/04

HOUSE BILL NO. 538

INTRODUCED BY BRADLEY, WALLIN, DRISCOLL, LYNCH,  
STANG, BENGTSON, D. BROWN, QUILICI, KIMBERLEY, GRADY,  
DAVIS, SQUIRES, HARRINGTON, KILPATRICK, PINSONEAULT

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON MARKETING OF MOTOR FUELS

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE PRICE OF  
RETAIL MOTOR FUEL AT WHOLESALE AND RETAIL LEVELS; PROVIDING  
FOR PENALTIES AND REMEDIES FOR SALES IN VIOLATION OF  
ESTABLISHED PRICES; PROHIBITING UNFAIR PRACTICES IN THE SALE  
OF RETAIL MOTOR FUEL; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1  
through 7 6] may be cited as the "Montana Retail Motor Fuel  
Marketing Act".

NEW SECTION. Section 2. Purpose. The legislature  
recognizes that independent and small dealers and  
distributors of retail motor fuel are vital to a healthy,  
competitive marketplace and are unable to survive  
financially in competition with subsidized, below-cost  
pricing at the retail level by dealers and distributors who  
have other sources of income. The legislature believes that

subsidized, below-cost pricing is a predatory practice that  
is not conducive to fair trade. The legislature finds that  
below-cost pricing laws are effective in protecting  
independent and small retailers and wholesalers in other  
jurisdictions from subsidized pricing, which is inherently  
unfair and destructive, reduces competition in the motor  
fuel marketing industry, and is a form of predatory pricing.  
The purpose of [sections 1 through 7 6] is to prevent and  
eliminate predatory pricing of retail motor fuel.

NEW SECTION. Section 3. Definitions. As used in  
[sections 1 through 7 6], unless the context requires  
otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through  
a franchise or marketing agreement, controls, is controlled  
by, or is under common control with any other person.

(2) "Cost of doing business", in the absence of proof  
of lesser cost, means 3 1/3 of the delivered cost of motor  
fuel for wholesale sales and 6 of the delivered cost of  
motor fuel for retail sales and in other cases includes all  
costs incurred in the conduct of business, including but not  
limited to:

(a) labor, including salaries of executives and  
officers;

(b) rent that is not less than the fair market value  
based on current use;

1 (c) interest on borrowed capital;

2 (d) depreciation;

3 (e) selling cost;

4 (f) maintenance of equipment;

5 (g) losses due to breakage or damage;

6 (h) credit card fees or other charges;

7 (i) credit losses; and

8 (j) all licenses, taxes, insurance, and advertising.

9 (3) "Customary discount for cash" means an allowance,

10 whether part of a larger discount or not, made to a

11 wholesaler or retailer when a person pays for motor fuel

12 within a limited or specified time.

13 (4) "Delivered cost of motor fuel" means:

14 (a) for a distributor or retailer, the lower of the  
15 most recent cost of motor fuel to the distributor or  
16 retailer or the lowest replacement cost of motor fuel to the  
17 distributor or retailer within 5 days prior to the date of  
18 sale, in the quantity last purchased, whether within or  
19 before the 5-day period, less all trade discounts except  
20 customary discounts for cash plus transportation costs and  
21 any taxes that may be required by law if not already  
22 included in the invoice cost; or

23 (b) for a refiner, that refiner's posted rack price to  
24 the wholesale class of trade at the terminal used by the  
25 refiner to obtain the motor fuel, plus transportation costs

1 and any taxes that may be required by law. If the refiner  
2 does not regularly sell to the wholesale class of trade at  
3 the terminal or does not post a terminal price, the refiner  
4 may use as its rack price the posted price of any other  
5 refiner at a terminal within the general trade area that has  
6 products readily available for sale to the wholesale class  
7 of trade.

8 (5) "Distributor" means a person engaged in the  
9 purchase of motor fuel for resale to a retail motor fuel  
10 outlet.

11 (6) "Motor fuel" means gasoline, as defined in  
12 15-70-201, alcohol blended with gasoline to produce gasoline,  
13 and special fuel as defined in 15-70-301.

14 (7) "Person" means an individual, a sole  
15 proprietorship, a partnership, a corporation, any other form  
16 of business entity, or any individual acting on behalf of  
17 any of them.

18 (8) "Posted rack price" means the f.o.b. terminal price  
19 for a particular motor fuel that a refiner, producer, or  
20 person offers for sale or transfer to itself or any related  
21 or unrelated person.

22 (9) "Refiner" means a person engaged in the production  
23 or refining of motor fuel, whether the production or  
24 refining occurs in this state or elsewhere, and includes any  
25 affiliate of the person.

EXHIBIT  
3-19-93  
DATE  
HB 216

1 (10) "Retailer" means a person engaged in the business  
2 of selling motor fuel at a retail motor fuel outlet.

3 (11) "Retail motor fuel outlet" means a place of  
4 business where motor fuel is sold and delivered into the  
5 tanks of motor vehicles regardless of whether the income  
6 from the selling and delivery of the fuel is the primary  
7 source of revenue of that business.

8 (12) "Sale" means a transfer, gift, sale, offer for  
9 sale, or advertisement for sale in any manner or by any  
10 means of motor fuel, including a transfer of motor fuel by a  
11 person to himself or to his affiliate.

12 (13) "Transfer price" means the price used by a person  
13 to transfer motor fuel to himself or to an affiliate for  
14 resale at a retail motor fuel outlet.

15 (14) "Transportation cost" means the actual cost of  
16 transportation of motor fuel or, in the absence of proof of  
17 actual cost, the common carrier rates fixed by the public  
18 service commission for the immediate market area concerned.

19 (15) "Wholesaler" means a person engaged in the business  
20 of making sales at wholesale to a retail motor fuel outlet.

21 NEW SECTION. Section 4. Below-cost sale prohibited.

22 (1) A wholesaler may not sell motor fuel to a retail motor  
23 fuel outlet at less than the delivered cost of the motor  
24 fuel plus the cost of doing business if the effect is to  
25 injure or destroy competition or substantially lessen

1 competition.

2 (2) A retailer may not sell motor fuel at less than the  
3 delivered cost of the motor fuel plus the cost of doing  
4 business if the effect is to injure or destroy competition  
5 or substantially lessen competition.

6 (3) A wholesaler may not sell or transfer motor fuel to  
7 itself or an affiliate for resale at a retail outlet at a  
8 transfer price lower than the price the wholesaler charges  
9 another retail motor fuel outlet that purchases a like  
10 quantity within the same competitive area if the effect is  
11 to injure or destroy competition or substantially lessen  
12 competition.

13 (4) The provisions of [sections 1 through 7 6] do not  
14 apply to a sale at wholesale or a sale at retail made:

15 (a) in an isolated transaction not in the usual course  
16 of business;

17 (b) if motor fuels are advertised, offered for sale, or  
18 sold in a bona fide clearance sale for the purpose of  
19 discontinuing trade in the motor fuel and the advertising,  
20 offer to sell, or sale states the reason for the sale and  
21 the quantity of the motor fuel advertised, offered for sale,  
22 or to be sold;

23 (c) if the motor fuel is advertised, offered for sale,  
24 or sold as imperfect or damaged and the advertising, offer  
25 of sale, or sale states the reason for the sale and the

1 quantity of the motor fuel advertised, offered for sale, or  
2 sold;

3 (d) if motor fuel is sold upon the final liquidation of  
4 a business; or

5 (e) if motor fuel is advertised, offered for sale, or  
6 sold by a fiduciary or other officer under the order or  
7 direction of a court.

8 (5) Notice required under this section is not  
9 sufficient unless the subject of the sale is kept separate  
10 from other stocks and is clearly and legibly marked with the  
11 reason for the sale and any advertisement of the goods  
12 indicates the same facts and the quantity to be sold.

13 (6) A wholesaler or retailer may advertise, offer to  
14 sell, or sell motor fuel at a price made in good faith to  
15 meet the price of a competitor who is rendering-the-same  
16 type-of-service-and-is selling the same article-at-cost OR A  
17 SIMILAR PRODUCT OF LIKE GRADE AND QUALITY. The price of  
18 motor fuel advertised, offered for sale, or sold under the  
19 exceptions in subsection (4) may not be considered the price  
20 of a competitor and may not be used as a basis for  
21 establishing prices below cost, and the price established at  
22 a bankruptcy sale may not be considered the price of a  
23 competitor under the provisions of this section.

24 (7) If a wholesaler sells motor fuel to another  
25 wholesaler, the former is not required to include in his

1 selling price to the latter the cost of doing business as  
2 defined in [section 3], but the latter wholesaler, upon  
3 resale to a retailer, is subject to the provisions of this  
4 section.

5 NEW SECTION. Section 5. Voidance of existing  
6 contracts. A contract, express or implied, made by a person  
7 in violation of a provision of [sections 1 through 7 6] is  
8 void and no recovery may be had on the contract.

9 NEW SECTION. Section 6. Penalty -- DISPOSITION --  
10 RELIEF. (1) A violation of [section 4] is an unfair trade  
11 practice-and-upon.

12 (2) UPON PRESENTATION BY AN OFFENDED PARTY OF EVIDENCE  
13 OF A VIOLATION OF [SECTION 4], THE DEPARTMENT OF JUSTICE OR  
14 A COUNTY ATTORNEY SHALL ISSUE TO THE SUSPECTED RETAILER OR  
15 WHOLESALE A DEMAND BY CERTIFIED MAIL TO CEASE THE  
16 VIOLATION. IF THE VIOLATION IS NOT CORRECTED WITHIN 24 HOURS  
17 AFTER THE SUSPECTED RETAILER OR WHOLESALE RECEIVES THE  
18 NOTIFICATION, THE DEPARTMENT OR THE COUNTY ATTORNEY MAY  
19 BRING AN ACTION TO ENJOIN THE VIOLATION.

20 (3) UPON conviction, a retailer or wholesaler is  
21 subject to a civil penalty of not more than \$1,000 a day for  
22 each day that the violation occurs, IS LIABLE FOR ATTORNEY  
23 FEES, AND IS SUBJECT TO INJUNCTIVE RELIEF.

24 +27(4) The department of commerce JUSTICE or a county  
25 attorney may bring an action for a violation of [section 4].

## 1 IF THE ACTION IS BROUGHT BY:

2 (A) THE DEPARTMENT OF JUSTICE, ONE-HALF OF THE AMOUNT  
3 OF THE PENALTY MUST BE DEPOSITED IN THE GENERAL FUND OF THE  
4 COUNTY WHERE THE ACTION WAS BROUGHT AND THE REMAINDER IN THE  
5 STATE GENERAL FUND; OR

6 (B) A COUNTY ATTORNEY, THE ENTIRE AMOUNT OF THE PENALTY  
7 MUST BE DEPOSITED IN THE GENERAL FUND OF THE COUNTY WHERE  
8 THE ACTION WAS BROUGHT.

9 NEW SECTION: Section 7, Civil Remedies, --- (1) --- The  
10 department of commerce may issue a cease and desist order  
11 requiring a wholesaler or retailer to cease violating the  
12 provisions of --- (4) --- The department or a county  
13 attorney may commence an action on behalf of the state for  
14 failure to comply with an order. A civil penalty of not less  
15 than \$200 or more than \$5,000 may be recovered in the  
16 action.

17 (2) --- The department or a county attorney may bring an  
18 action to enjoin a violation of --- (3) ---

19 (3) (5) An action under this section must be commenced  
20 in the county where the motor fuel is sold.

21 (6) A PERSON INJURED AS A RESULT OF AN ACT OR PRACTICE  
22 THAT VIOLATES [SECTION 4] MAY BRING A CIVIL ACTION FOR  
23 APPROPRIATE RELIEF, INCLUDING AN ACTION FOR DECLARATORY  
24 JUDGMENT, INJUNCTIVE RELIEF, AND ACTUAL DAMAGES.

25 NEW SECTION. Section 7. Saving clause. [This act] does

1 not affect rights and duties that matured, penalties that  
2 were incurred, or proceedings that were begun before [the  
3 effective date of this act].

4 NEW SECTION. Section 8. Severability. If a part of  
5 [this act] is invalid, all valid parts that are severable  
6 from the invalid part remain in effect. If a part of [this  
7 act] is invalid in one or more of its applications, the part  
8 remains in effect in all valid applications that are  
9 severable from the invalid applications.

10 NEW SECTION. Section 9. Effective date -- TERMINATION.  
11 [This act] is effective on passage and approval AND  
12 TERMINATES JULY 1, 1993.

-End-



## SENATE JUDICIARY

EXHIBIT NO. 2

DATE 3-19-93

BILL NO. HB 216

House BILL NO. 216  
 INTRODUCED BY *Don Nelson*  
 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MOTOR FUELS

1 MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN  
 2 ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT  
 3 LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE  
 4 OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR  
 5 SUBSTANTIALLY LESSEN COMPETITION; REMOVING THE TERMINATION  
 6 OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING  
 7 SECTION 30-14-804, MCA, AND SECTION 9, CHAPTER 499, LAWS OF  
 8 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 30-14-804, MCA, is amended to read:

16 "30-14-804. (Temporary) Below-cost sale prohibited. (1)  
 17 A wholesaler may not sell motor fuel to a retail motor fuel  
 18 outlet at less than the delivered cost of the motor fuel  
 19 plus the cost of doing business if the effect is to injure  
 20 or destroy competitors or to injure or destroy competition  
 21 or substantially lessen competition.

22 (2) A retailer may not sell motor fuel at less than the  
 23 delivered cost of the motor fuel plus the cost of doing  
 24 business if the effect is to injure or destroy competition  
 25 or substantially lessen competition.

1 (3) A wholesaler may not sell or transfer motor fuel to  
 2 itself or an affiliate for resale at a retail outlet at a  
 3 transfer price lower than the price the wholesaler charges  
 4 another retail motor fuel outlet that purchases a like  
 5 quantity within the same competitive area if the effect is  
 6 to injure or destroy competition or substantially lessen  
 7 competition.

8 (4) The provisions of this part do not apply to a sale  
 9 at wholesale or a sale at retail made:

10 (a) in an isolated transaction not in the usual course  
 11 of business;

12 (b) if motor fuels are advertised, offered for sale, or  
 13 sold in a bona fide clearance sale for the purpose of  
 14 discontinuing trade in the motor fuel and the advertising,  
 15 offer to sell, or sale states the reason for the sale and  
 16 the quantity of the motor fuel advertised, offered for sale,  
 17 or to be sold;

18 (c) if the motor fuel is advertised, offered for sale,  
 19 or sold as imperfect or damaged and the advertising, offer  
 20 of sale, or sale states the reason for the sale and the  
 21 quantity of the motor fuel advertised, offered for sale, or  
 22 sold;

23 (d) if motor fuel is sold upon the final liquidation of  
 24 a business; or

25 (e) if motor fuel is advertised, offered for sale, or

1 sold by a fiduciary or other officer under the order or  
2 direction of a court.

3 (5) Notice required under this section is not  
4 sufficient unless the subject of the sale is kept separate  
5 from other stocks and is clearly and legibly marked with the  
6 reason for the sale and any advertisement of the goods  
7 indicates the same facts and the quantity to be sold.

8 (6) A wholesaler or retailer may advertise, offer to  
9 sell, or sell motor fuel at a price made in good faith to  
10 meet the price of a competitor who is selling the same or a  
11 similar product of like grade and quality. The price of  
12 motor fuel advertised, offered for sale, or sold under the  
13 exceptions in subsection (4) may not be considered the price  
14 of a competitor and may not be used as a basis for  
15 establishing prices below cost, and the price established at  
16 a bankruptcy sale may not be considered the price of a  
17 competitor under the provisions of this section.

18 (7) If a wholesaler sells motor fuel to another  
19 wholesaler, the former is not required to include in his  
20 selling price to the latter the cost of doing business as  
21 defined in 30-14-803, but the latter wholesaler, upon resale  
22 to a retailer, is subject to the provisions of this section.

23 (8) Evidence of advertisement, offering to sell, or  
24 sale of motor fuel at less than cost is prima facie evidence  
25 of ~~intent to injure competitors or destroy or substantially~~

*injury to competitors.*

1 ~~lessen competition.~~ (Terminates July 1, 1993--sec. 9, Ch.  
2 499, L. 1991.)"

3 **Section 2.** Section 9, Chapter 499, Laws of 1991, is  
4 amended to read:

5 "Section 9. Effective date ---termination. [This act]  
6 is effective on passage and approval and terminates-July-17  
7 1993."

8 **NEW SECTION. Section 3.** Effective date. [This act] is  
9 effective on passage and approval.

-End-

HOUSE BILL 216

3-19-93

AMENDMENTS:

- 1.) Page 1, line 20. "competitors, or to injure or destroy"
- 2.) Page 1, line 24. "competitors, or to injure or destroy"
- 3.) Page 2, line 6. "competitors or to injure or destroy"
- 4.) Page 3, line 23-25. "Evidence of advertisement, offering to sell, or sale of motor fuel at less than cost is prima facie evidence of injury to competitors and competition."

SENATE JUDICIARY  
EXHIBIT NO. 3  
DATE 3-19-93  
BILL NO. HB 216

CLARA GILREATH  
CLERK OF DISTRICT COURT

MAR 31 11 41 AM '92

FILED BY *Lee O. [Signature]*  
DEPUTY

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 3-19-93

BILL NO. HB 216

in  
ne

MONTANA FIRST JUDICIAL DISTRICT COURT  
COUNTY OF LEWIS AND CLARK

INDEXED

\*\*\*\*\*  
THE STATE OF MONTANA,  
  
Plaintiff,  
  
vs.  
  
GASAMAT,  
  
Defendant.  
\*\*\*\*\*

Cause No. BDV-91-1522

ist  
it

O R D E R

This matter was heard by the Court on November 22, 1991. At that time the State presented its witnesses. Defendant (hereinafter Gasamat) has moved for summary judgment and/or dismissal. The Court feels that the motion for summary judgment is not procedurally correct. Rather, the motion is probably made under Rule 50(a) of the M.R.Civ.P. That rule provides that a party may move for a directed verdict at the close of the evidence offered by his opponent. In such a situation, the Court must view the evidence in a light most

an-  
  
e  
of  
re  
  
s a  
3,

1 1991, Gasamat lowered its price to \$1.15.9 per gallon. On that  
2 date all other competitors were at \$1.16.9 per gallon. Mr. Rust  
3 felt that, using the pricing formula announced by the State in  
4 the Montana Retailer Motor Fuel Marketing Act, the price offered  
5 by Gasamat was in violation of the formula. Mr. Rust also  
6 testified that shortly after Gasamat lowered its price, most  
7 Helena retailers did the same. Mr. Rust testified that, during  
8 the period of time in question, he lost several hundred dollars.

9 Gasamat's motion for directed verdict basically seems  
10 to agree, at least for the purpose of the motion, that the Court  
11 may assume that Gasamat priced below the cost set forth in the  
12 formula. However, according to Gasamat, the State has failed to  
13 prove that the effect was to injure or destroy competition. The  
14 Court has been presented with a variety of cases. Numerous of  
15 the cases quote the Sherman Anti-Trust Act, which the Court  
16 doesn't find particularly helpful. Instead, the Court looks to  
17 cases that were cited to it that deal with retail motor fuel  
18 marketing acts similar to Montana's.

19 Gasamat's main contention, as noted above, is that  
20 there has been no proof that competition has been hindered.  
21 Gasamat notes that acts such as the one here in question are  
22 designed to protect competition and not competitors. Thus, the  
23 mere fact that a competitor may have lost money is not evidence  
24

25 /////

1 that competition itself has been damaged. The State, on the  
2 other hand, contends that such proof has been presented and that  
3 the Court can infer a lessening of competition based on the  
4 below-standard pricing.

5 The State refers the Court to the case of Glenn Smith  
6 Oil Company v. H. R. Sheets, 704 P.2d 474 (Okla. 1985). That  
7 case involved an act not unlike Montana's. However, Section  
8 598.5(c) of said act provided: "Evidence of advertisement,  
9 offering to sell, or sale of merchandize by any retailer or  
10 wholesaler at less than cost to him, shall be prima facie  
11 evidence of intent to injure competitors and to destroy or sub-  
12 stantially lessen competition." Id. at 478. The Montana Act,  
13 however, contains no such statutory presumption.

14 Next, the State cites the Court to the case of Star  
15 Service & Petroleum Co., Inc. v. State, 518 So. 2d 126 (Ala.  
16 Civ. App. 1986). That case involved the Alabama Motor Fuel  
17 Marketing Act that contained a provision not unlike Section 30-  
18 14-804(2), MCA. In that case, the Alabama court found that one  
19 of the defendant's stations sold below the price announced by  
20 the statute. At the hearing, neighboring stations indicated  
21 that they lost money pursuant to the pricing arrangement. The  
22 Alabama court held that evidence tended to show a reduction in  
23 competition as was required to be shown under the Alabama act.

24 Gasamat, on the other hand, cites the Court to the  
25

EXHIBIT 4  
3-19-93  
Hb 216

1 case of GHEM, Inc. v. Mapco Petroleum, Inc., 767 F. Supp. 1418  
2 (1990). That case involved the Tennessee Petroleum Trade  
3 Practices Act. That act contained a provision not unlike the  
4 Montana provision here in effect. In that case, the Tennessee  
5 court held that the plaintiff must show damage to competition,  
6 not just to a competitor. Id. at 1422. The Tennessee court  
7 held that merely having evidence of lost profits by one competi-  
8 tor was not enough to uphold a finding that competition had been  
9 injured or destroyed or lessened.

10 The Tennessee court set forth what a plaintiff must  
11 show in a case such as this. First, evidence must be presented  
12 to show that the pricing scheme has somehow hindered consumer  
13 choice or restricted entry into the retail gasoline business.  
14 Evidence must concentrate on cost, prices, profits, consumer  
15 choices, and barriers to entry into the market before, during  
16 and after the alleged illegal pricing. Id.

17 The Tennessee court also found that below-cost pricing  
18 did not automatically infer a reduction in competition. Rather,  
19 the plaintiff must show an actual adverse effect on competition.  
20 Id. Finally, the Tennessee court noted that a showing of an  
21 adverse effect on competition as required by the Tennessee  
22 Petroleum Trade Practices Act (and also Section 30-14-804(2),  
23 MCA), is a formidable task.

24 This Court must agree with the decision of the  
25

1 Tennessee Federal Court. In the first instance, it appears to  
2 be a better-reasoned decision than the decision in Star Service,  
3 supra.

4 Thus, it would appear to this Court that the State of  
5 Montana has failed to present a prima facie case that the  
6 pricing scheme of Gasamat, even though it may be less than the  
7 delivered cost of motor fuel, has had all the effect of injuring  
8 or destroying competition or to substantially lessen competi-  
9 tion. As noted by the Tennessee court, proof of such a  
10 condition is formidable. There has been no evidence that would  
11 show that Gasamat's practices have in any way hindered consumer  
12 choice or restricted entry by anyone into the gasoline retail  
13 business. On the contrary, it appears that at least one  
14 competitor, Cenex, has entered the market at about the time in  
15 question.

16 It should be noted that perhaps the legislature may  
17 want to look at amending the Act so that below-cost pricing  
18 gives rise to an inference of damage to competition as is the  
19 case in Oklahoma. If the legislature fails to act, then county  
20 attorneys will be burdened with a formidable task of presenting  
21 evidence to show damage or lessening of competition as required

22 /////

23 /////

24 /////



4  
3-19-93  
HB 216

1 by the Act.

2 For the foregoing reasons, IT IS HEREBY ORDERED,  
3 ADJUDGED AND DECREED that the complaint herein is DISMISSED.

4 DATED this 3/ day of March, 1992.

5  
6   
7 District Court Judge

8 pc: Gwendolyn R. Wilson  
9 Janice L. Rehberg

10 Gasamat.ord

11 k  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## State Update: Below Cost Selling Statutes

### States with Below-Cost Selling Statutes

Alabama *MONTANA*  
 California *ARKANSAS \**  
 Florida  
 Georgia  
 Idaho  
 Iowa  
 Massachusetts  
 New Jersey  
 North Carolina

Pennsylvania  
 Rhode Island  
 South Carolina  
 Tennessee  
 Utah  
 West Virginia  
 Wisconsin  
 Wyoming

### SENATE JUDICIARY

EXHIBIT NO. 5  
 DATE 3-19-93  
 BILL NO. HB216

\* AWAITING GOVERNOR'S  
 SIGNATURE

## State Update: Divorcement

### States with Divorcement Statutes

Connecticut  
 Delaware  
 District of Columbia  
 Maryland  
 Nevada  
 Virginia

Note: Florida had a divorcement statute but it was invalidated by the courts and removed from the books in 1985.

*Actively*  
 STATES ARE SEEKING BELOW COST SALES BILLS,

TEXAS  
 MISSOURI



SENATE JUDICIARY

EXHIBIT NO. 6

DATE 3-19-93

BILL NO. HB216

Phone 721-2170

2501 Catlin, Suite 207

P.O. Box 3356

Missoula, MT 59306

March 17, 1993

Senate Judiciary Committee  
Proponent to H. B. 216

The Montana Retail Motor Fuel Marketing Act prohibits the sale of gasoline at below cost. The amended version of H.B. 216 is the only legal tool available to define "cost" in litigation of violations of this law. In Montana there are at least two refiners of gasoline that also sell on a retail basis, Cenex and Gas-A-Mat. Refiners are able to manipulate cost figures by adjusting refinery profits to reflect lower wholesale costs of product at their retail locations.

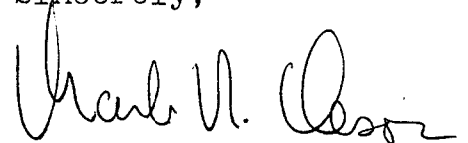
As recently as two weeks ago Gas-A-Mat, an out of state company, was selling gasoline in several Montana markets at less than the delivered cost of the product. While this is clearly in violation of the law, the County Attorney in Missoula was unwilling to prosecute the case because of the flaws in the existing law.

A group of Missoula retailers and I have proceeded on our own with legal action against Gas-A-Mat. However we will be unable to continue our fight against predatory pricing without the passage of H.B. 216 in its amended form.

We are asking for a law that prevents unfair predatory pricing by those who only have monopoly on their mind, not the consumers best interest. We are not asking for any guaranteed profit, in fact no profit at all is the basis of H.B. 216. If H.B. 216 becomes law and retail pricing is limited to rack price plus 6% you will see independent marketers

disappear anyway. No one can afford to sell at cost for long, but you can be sure those with big money will be the only ones here after we're gone. Any action that eliminates competitors from the market place is anti-consumer. We are asking that you pass H.B. 216 in order to give us a level playing field, not a winning hand, and to assure us and the Montana consumers that the deal is fair.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark R. Olson". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark R. Olson  
President  
Ole's Country Stores Inc.

mro/plo



**MONTANA PETROLEUM ASSOCIATION**

A Division of the  
Rocky Mountain Oil and Gas Association

**SENATE JUDICIARY**

EXHIBIT NO. 7

DATE 3-19-93

BILL NO. HB 216

Janelle K. Fallan  
Executive Director

Helena Office  
2030 11th Avenue, Suite 23  
Helena, Montana 59601  
Phone (406) 442-7582  
Fax (406) 443-7291

Billings Office  
The Grand Building, Suite 510  
P.O. Box 1398  
Billings, Montana 59103  
Phone (406) 252-3871  
Fax (406) 252-3271

**TESTIMONY IN OPPOSITION TO ..  
HB 216  
SENATE JUDICIARY COMMITTEE  
MARCH 19, 1993**

The fact that this bill passed the House by a fairly wide margin should not be taken as an indication of wide support for it. Please bear in mind that the first committee vote on it was a tie. Then it was tabled in House committee, and not approved by the committee until it had been greatly amended, including another two-year sunset.

House members received a great deal of pressure, as you will too, from a very small group of constituents -- those who wholesale and retail motor fuel, and stand to benefit. When you vote on this bill, also consider your other constituents -- all those other people in your districts who pay more for their gasoline than they need to when the state sets a minimum price.

Much has been said by the proponents of this bill about the Judge Sherlock decision rendered March 31, 1992 in *State v. Gasamat*. I would call your attention to the body of the decision in which the judge discusses two cases presented by the parties in the suit, one in Alabama and the other in Tennessee. On Pp. 4 & 5 of the Sherlock decision he states as follows: "This court must agree with the decision of the Tennessee Federal Court. In the first instance, it appeared to be a better reasoned decision ..."

Continuing to quote from the Sherlock decision on p. 5:

"The Tennessee court set forth what a plaintiff must show in a case such as this. First, evidence must be presented to show that the pricing scheme has somehow hindered consumer choice or restricted entry into the retail gasoline business. Evidence must concentrate on cost, prices, profits, consumer choices, and barriers to entry into the market before, during and after the alleged illegal pricing.

The Tennessee court also found that below-cost pricing did not automatically infer a reduction in competition. Rather, the plaintiff must show an actual adverse effect on competition."

We have studied the Tennessee case to find out how a court favored by Judge Sherlock could enforce this act if it is not allowed to sunset. Thus, I have added an amendment to the enforcement section 30-14-806 if the committee wants to enforce the act. However, in the interest of Montana consumers, we would urge you not to concur in HB 216.

## AMENDMENT TO HB 216 (GRADY)

### New Section

30-14-806 (Temporary) Penalty-disposition-relief is amended as follows:

Following: "violation"

insert the following new subsection and renumber:

(3) In any such action under subsection (2) and (6) of this section the plaintiff must show by clear and convincing evidence that the following must have occurred:

(a) The pricing scheme by a wholesaler or retailer has hindered consumer choice, or such pricing scheme has restricted entry into the retail gasoline business, or

(b) Such pricing scheme has had an adverse effect on competition.

7  
3-19-93  
HB 216

Statement of  
William D. Dermott  
Legislative & Regulatory Affairs Manager  
for  
Exxon Company, U.S.A.  
before the  
Judiciary Committee  
of the  
Montana Senate  
regarding  
House Bill 216

SENATE JUDICIARY  
EXHIBIT NO. 8  
DATE 3-19-93  
BILL NO. HB 216

Mr. Chairman, members of the Committee, my name is Bill Dermott and I am the Legislative and Regulatory Affairs Manager for the Marketing Department of Exxon Company, USA. I'm here today to express Exxon's opposition to House Bill 216, which as originally proposed, would modify the existing below cost selling prohibition enacted in 1991 as HB 538 and make it a permanent part of Montana law.

Exxon is not a direct marketer in Montana. All of the Exxon branded gasoline we sell in Montana is sold through branded wholesalers, also known as distributors, who in turn, resell it to the public through independent retail dealers or through outlets they operate with their own employees. Exxon has no company-operated outlets or direct supplied dealers in the state.

Although the House did pass HB 216, they returned the bill to the form enacted in 1991, and again limited its life to two years. None-the-less, Exxon remains opposed to the bill, either in its original form or as amended, for the same reasons we opposed the 1991 legislation: it has resulted in higher gasoline prices to Montana motorists and it is unnecessary to protect the legitimate interests of the wholesalers and retailers who market gasoline in the state.

One of the questions I was asked when we opposed the 1991 bill, and have been asked again this year, is why does Exxon oppose the bill since we have no direct marketing in the state and, to our reading, this statute doesn't apply to the wholesale prices we charge to our only branded customers' in the state -- our distributors. The answer is simply, we don't believe it is in the best interest of our distributors, their ability to compete in the marketplace, and through them, our own ability to remain a viable competitor in Montana. And, we don't believe its in the best interests of Montana's consumers.

But beyond that, we are opposed to HB 216 because this type of law is basically incompatible with our economic system where competition in the marketplace determines who succeeds. Once you begin to legislate pricing in a competitive marketplace, it is very difficult to adjust or stop -- even if the problem you were trying to solve no longer exists. This was made clear in the federal price and allocation controls that went into effect during the '73-'74 shortage and continued in some fashion until 1981.

### **Impact of Existing Law**

When I testified against HB 538 in 1991, I told the Senate Committee that experience in other states which passed similar laws, as well as comments by the Federal Trade Commission and the U S Department of Energy, all indicated that the bill would be likely to raise gasoline prices in the state.

Based on data developed by the Lundberg Survey, this may well have been the case. An examination of the impact of the current Montana law, which has been in effect for some 18 months, shows that the statute may have raised retail gasoline prices by as much as two or three cents per gallon, costing motorists as much as \$9 million per year as a result. This money has come from Montana motorists and flowed not to refiners like Exxon, but into the hands of the wholesalers and retailers who market here.

As such laws go, the Montana statute is not as onerous as some other below cost selling prohibitions, and as amended by the House less onerous than its supporters intended. Yet the form of this bill before you today has still cost motorists between 2 and 3 cents per gallon. This cost came despite the fact that in the only case brought under the statute, against Gasamat, the State District Court Judge held that no violation occurred since the law did not prohibit injury to an individual competitor.

As originally introduced, HB 216 sought to amend the existing law to get around the Gasamat decision by making the harming of a single competitor a violation. Such a prohibition can only add to the upward pressure the existing law has already placed on gasoline prices. Further, it goes well beyond the traditional antitrust law concept of protecting the competitive process from abuse by providing a legal insulation of an individual merchant from the every day forces of competition. While antitrust laws enhance competition by making sure the process operates in the interest of consumers, this statute as proposed will harm competition by providing gasoline merchants with an immunity from its impact.



The result of the House action appears to be that, if extended, the bill will remain applicable only to those situations where the competitive process, and not an individual competitor, is alleged to have been harmed. Although this is clearly better than legislation to protect individual competitors, this additional and unnecessary protection of the competitive process can come only at a cost -- in this case the cost of higher prices for Montana motorists.

### Additional Protection Unnecessary

My Company doesn't believe there is any justification for this additional protection -- any need for requiring Montana motorists to pay more than they otherwise would because some marketers are afraid of competition. Existing laws make this bill clearly unnecessary to protect the legitimate business interests of independent motor fuel marketers. They are already protected against unfair pricing or other unfair marketing practices of their suppliers by the same large body of law that protects other similar merchants.

That group of laws includes the Montana Unfair Trade Practices Act, the Sherman Act, Clayton Act, Robinson-Patman Act, and the Federal Trade Commission Act which prohibit actions to control prices and supply. Since these laws appear adequate to protect other merchants, we fail to see why petroleum distributors need additional guarantees.

Finally, petroleum marketing is so competitive that it would be virtually impossible for any one competitor to get such a large share of the market that invoking any of these laws is likely to be necessary. Gasoline is so readily available and so widely traded that almost anyone with the interest and capital can enter the wholesale gasoline marketplace.

Perhaps it is this high level of competition and ease of entry that has caused some market participants to seek legislative protection. While that motivation is understandable, enacting protections like this can only come at a cost to the citizens of the state in the form of higher prices. It comes down to whether to protect the few at the expense of the many. In this case, I hope you'll choose the many over the few and reject HB 216 by deciding the competitive marketplace is the best protection for both marketers and consumers.

DATE 3-19-93

## ANALYSIS OF EXXON'S STUDY OF THE IMPACT OF HOUSE BILL 538 HB538

In a legislative hearing of the Montana House of Representatives, Exxon produced a report comparing unleaded regular grade gasoline prices in Billings, Montana and Cheyenne, Wyoming. While conceding that many factors have an influence on gasoline pricing Exxon's presentation leads to the conclusion that the enactment of House Bill 538 cost Montana consumers as much as 2.8 cents per gallon. That's not true.

THE PROFIT MARGIN ON REGULAR UNLEADED GASOLINE HAS DECLINED SINCE THE PASSAGE OF HB538. Exxon's report indicates that the retail price of regular unleaded gasoline in Billings, Montana declined 6.0 cents per gallon during their study period January, 1990 to December, 1992. OPIS, the pricing source used by the State for verification of correct pricing of fuel purchases, indicates the rack price (refinery and terminal price) of regular unleaded gasoline in Billings was 5.4 cents per gallon lower in 1992 than in 1990. Thus retailers' selling prices have decreased .6 cent per gallon more than their cost of purchasing the product.

RACK PRICES (oil company refinery and terminal prices) HAVE COME DOWN MORE IN CHEYENNE, WYOMING THAN THEY HAVE IN BILLINGS, MONTANA. According to OPIS the rack price in Cheyenne decreased by 7.1 cents per gallon from 1990 to 1992, while in Billings the decrease was only 5.4 cents per gallon. A graph is attached showing Billings and Cheyenne rack prices. It's reasonable to conclude that this additional decrease in the buying price of retailers in Cheyenne resulted in lower retail prices. Why did the oil companies lower their prices in Cheyenne more than they did in Billings after the passage of HB538?

DID MONTANA RETAILERS HOLD THEIR MARGINS DOWN DURING THE MIDDLE EAST CONFLICT? 1990 was a year of significant volatility in petroleum pricing because of the Middle East conflict. Whereas price changes of fractions of a cent from the refiners are common, during the Middle East conflict prices changed by multiple cents. The data presented by Exxon and in this summary show that Billings retailers made less in 1992 than 1990, but Cheyenne saw even bigger reductions in margins. This could be attributed to Cheyenne retailers expanding their margin in 1990 during the conflict while Billings retailers retained the same margins or didn't increase their margins as much.

BILLINGS AND CHEYENNE ALONE ARE NOT REPRESENTATIVE OF THE ENTIRE STATES OF WYOMING AND MONTANA. The attached table was prepared from data gathered by the interim study committee that prepared and recommended passage of HB538. That committee calculated retail margins in 92 cities in Montana. Their data shows: 1) there is a significant difference in retail margins between towns, and 2) on the day the survey was taken some towns were selling gasoline below cost while other towns had significantly higher margins. Choosing one city as representative of the state is not meaningful. The city selected may be one targeted for higher margins while driving someone out of business in another town.

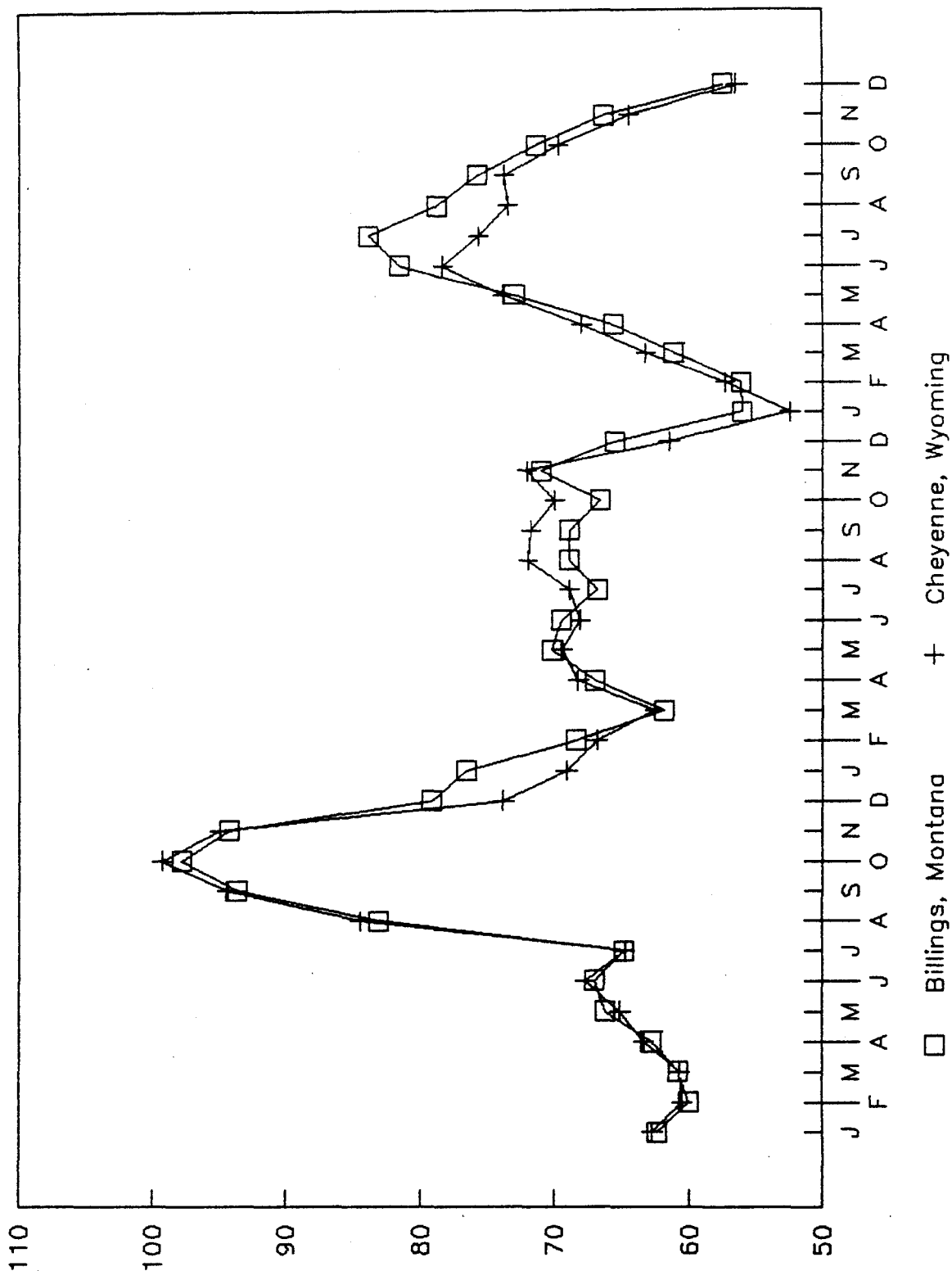
EXHIBIT 9

DATE 3-19-93

HB 216

# OPIS RACK PRICES

January, 1990 - December 1992



# AVERAGE PER GALLON UNLEADED GASOLINE MARGINS

Joint Interim Subcommittee on Marketing of Motor Fuels

Data Gathered May, 1990

Absorkee	15.54	Hot Springs	18.68
Anaconda	7.76	Inverness	16.88
Augusta	20.48	Judith Gap	9.15
Baker	17.84	Kallispell	7.80
Belgrade	6.54	Laurel	9.44
Big Fork	10.13	Lewistown	8.25
Big Sandy	8.88	Libby	10.84
Big Timber	9.18	Lima	18.89
Billings	8.44	Lincoln	11.68
Boulder	5.98	Livingston	5.98
Bozeman	6.54	Lolo	7.02
Broadus	13.98	Malta	8.78
Browning	9.64	Manhattan	6.98
Butte	8.18	Miles City	5.73
Cascade	5.98	Missoula	7.34
Chester	11.18	Moore	15.53
Chinook	2.56	Noxon	13.46
Choteau	7.38	Phillipsburg	11.68
Circle	11.42	Plains	12.79
Columbia Falls	8.79	Poison	2.89
Columbus	9.54	Red Lodge	17.47
Conrad	9.57	Ronan	3.18
Culbertson	12.49	Roundup	7.38
Custer	11.18	Roy	12.69
Cut Bank	8.54	St. Regis	16.89
Darby	13.98	Saco	14.18
Deer Lodge	8.98	Seely Lake	16.18
Denton	10.53	Shelby	11.98
Dillon	13.09	Sheridan	14.59
Drummond	13.28	Sidney	6.33
East Glacier	16.98	Stanford	12.28
Ekalaka	10.03	Sunburst	11.37
Ennis	13.09	Superior	10.18
Eureka	11.02	Thompson Falls	12.14
Fairfield	6.76	Three Forks	10.85
Forsyth	10.34	Townsend	0.76
Fort Benton	5.64	Troy	11.36
Gardiner	13.98	Valier	13.76
Glasgow	5.98	West Yellowstone	16.64
Glendive	5.39	Whitehall	9.38
Great Falls	1.54	Whitefish	7.47
Hamilton	11.37	White Sulphur	8.09
Hardin	9.47	Winifred	10.37
Harlowtown	10.43	Wisdom	19.59
Havre	3.00	Wolf Point	8.29
Helena	-1.46	Worden	12.88

EXHIBIT 9  
DATE 3-19-93

SENATE JUDICIARY

EXHIBIT NO. 19

DATE 3-19-93

BILL NO. HB216

**Analysis  
of the Impact  
of  
HB 538 - A Below Cost Selling Prohibition  
on  
Retail Gasoline Prices  
in Montana**

January, 1993

## **Executive Summary**

### **The Statute**

In April, 1991, the Montana legislature enacted House Bill 538, which prohibited wholesalers and retailers from selling gasoline below cost as defined in the statute. "Cost" in this context includes not only the acquisition cost of the product, but all the wholesaler's or retailer's costs incurred in the conduct of business. The law prohibits below cost sales if the effect is to injure or destroy competition or substantially lessen competition. It also exempts from this prohibition those sales "made in good faith to meet the price of a competitor .."

### **Study Methodology**

The impact of this statute was evaluated by comparing the movement of retail prices for unleaded regular grade gasoline in Billings, MT, with those in Cheyenne, WY. The period examined was January, 1990, through December, 1992. Since Montana's excise tax of about 21 cents per gallon is more than twice Wyoming's, which is only 9 cents per gallon, these prices were compared on an ex-tax basis. Data on a monthly basis was obtained from the Lundberg Survey.

### **Study Results**

Examination of the data showed that retail prices, exclusive of all taxes, declined in both cities. However, their decline in Cheyenne, WY, which is not subject to a gasoline specific below cost selling statute, was greater than their decline in Billings. Retail prices in Cheyenne, represented by self-service unleaded regular cash prices declined by 2.8 cents per gallon more than the decline experienced in Billings.

### **Conclusion**

While many factors may have an impact on gasoline prices, the enactment of HB 538 could be viewed as costing the motorists of the state 2.8 cents per gallon. Applied to the 329 million gallons of gasoline sold in the state in 1991, this equates to \$9 million per year in higher prices.

## **Impact of Montana House Bill 538**

### **Background**

In April, 1991, Montana enacted House Bill 538, which prohibited selling gasoline below cost at either the wholesale or retail levels.<sup>1</sup> The statute defines "cost", to include not only the acquisition cost of the gasoline to the wholesaler or retailer, but that merchant's costs incurred in the conduct of business. The statute provides a list of examples of such costs, but clearly states that it is not all inclusive.

Once costs are defined, the statute establishes which sales are prohibited. Essentially, both wholesalers and retailers are prohibited from making any sale at a price which is less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competition or substantially lessen competition.<sup>2</sup>

Several types of sales are exempted from this prohibition including isolated transactions, clearance sales, damaged goods sales, sales on final liquidation of the business, sales under the direction of a court, and finally, sales made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quantity. Further, sales between wholesalers are not required to include the cost of doing business.

The statute may be enforced by either the state Department of Justice, the appropriate County Attorney or by a person injured as a result of a violation through a civil action.

### **Study Methodology**

To determine whether or not this statute has had an impact on the retail price of gasoline in Montana, it was first necessary to determine what pricing data is available for the state and whether or not similar data is available for a "control state" likely to experience or have experienced similar market conditions during the study period. Pricing data needed to be

---

<sup>1</sup> In a practical sense, the statute effectively excludes most refiners from its price regulation through the definition section. Refiner's delivered cost of motor fuel is defined as the refiner's posted rack price to the wholesale class of trade. Since most of the gasoline supplied by refiners in the state is sold to wholesalers at this price on an FOB basis, it would be exceedingly difficult for a refiner to violate the below cost selling prohibition.

<sup>2</sup> The statute also prohibits a wholesaler from transferring motor fuel to itself or an affiliate for sale at a retail outlet at a price lower than the price the wholesaler charges another retail motor fuel outlet that purchases like quantities within the same competitive area if the effect is to injure or destroy competition or substantially lessen competition.

available on a relatively consistent basis for a significant period of time before and after the April, 1991, enactment of the statute.

The only retail pricing data found to be consistently available in Montana was that collected from the Billings market by the Lundberg Survey, Incorporated, a well respected industry source of such data. Lundberg also collects retail pricing data in Wyoming from the Cheyenne market. This data was selected as a control against which to measure the change in Billings prices. Since Cheyenne is largely supplied from the same sources as the Billings market, any supply anomalies should have relatively the same impact on both sets of data<sup>3</sup>.

In order to make the analysis manageable, only one retail price data point was used for each month. The retail prices used were the averages collected by Lundberg for the lowest self service regular unleaded gasoline offering. Since Lundberg collects prices twice monthly in Billings, but only once per month in Cheyenne, the single Billings average price corresponding to the Cheyenne data point was used.

However, the raw data had to be adjusted to account for the large difference in state excise taxes. Wyoming's excise tax over the period was about 9 cents per gallon while Montana's was about 21 cents per gallon. In order to make the data comparable, both states' excise taxes, as well as the Federal excise tax, were subtracted from the retail observations reported by Lundberg.<sup>4</sup>

Once the data was collected, the researchers looked at the average retail prices in Billings and Cheyenne both before and after the enactment of the below cost selling prohibition. Plots of these price observations are shown in the attached chart, while a summary of the average retail prices before and after enactment of the statute is shown below:

---

<sup>3</sup> Prior to April, 1991, both Wyoming and Montana had substantially identical statutes prohibits selling any product below cost. The Wyoming statute was originally enacted in 1937 and the Montana law in 1947. Proponents of Montana HB 538 maintained that the existing statute did not provide them with adequate protection. Further, generic prohibitions such as this are not generally vigorously enforced. Thus since both pre-1991 statutes are identical, neither is likely to have had any impact on gasoline prices.

<sup>4</sup> Montana's excise tax was 21 cents per gallons between 1/1/90 and 6/30/91, 20.75 cents per gallon between 7/1/91 and 10/31/91, 20 cents per gallon between 11/1/91 and 8/31/92 and 21.4 cents per gallon between 9/1/92 and 12/31/92. Wyoming's excise tax was a constant 9.01 cents per gallon for the period 1/1/90 to 12/31/92.



	<u>Retail Price Comparisons</u>		
	<u>Pre-enactment Average</u>	<u>Post-enactment Average</u>	<u>Increase/ (Decrease)</u>
Billings, MT	89.3	83.3	(6.0)
Cheyenne, WY	87.6	78.8	(8.8)

### Analysis & Conclusion

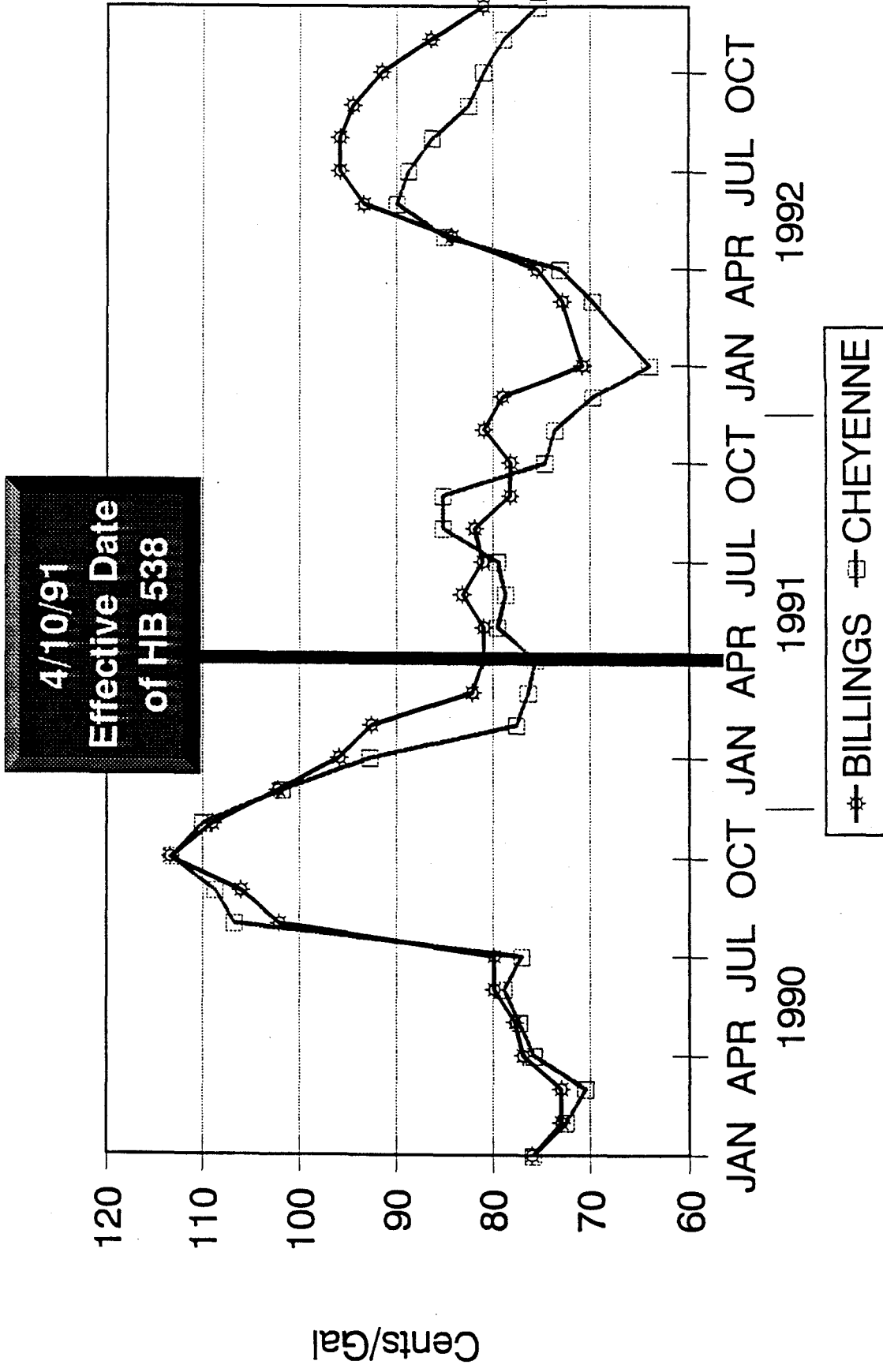
The data clearly indicates that retail prices were lower in both markets in the post-enactment period than they were in the pre-enactment period. However, the ex-tax retail prices in Cheyenne declined by 8.8 cents per gallon, a 2.8 cent per gallon or 31% greater decline in retail prices than the 6 cents per gallon drop experienced in Billings.

Thus, the data indicates that the passage of HB 538 is likely to have been at least part of the reason that Billing's retail prices were not as competitive (i.e. did not experience as sharp a decline) as did Cheyenne's. If this is the case, then Montana motorists have been paying as much as 2.8 cents per gallon (the difference between the declines in the retail prices in the two cities) more than Wyoming motorists as a result.

If this increase in costs is applied to the 329 million gallons of gasoline sold in the state in 1991, then Montana motorists paid \$9 million in higher gasoline prices as a result of House Bill 538.

# COMPARISON OF RETAIL PRICES

BILLINGS, MT & CHEYENNE, WY



Excludes all state & federal taxes

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 12

DATE 3-19-93

FILE NO. HB245

GOOD MORNING MR. CHAIRMAN BILL YELLOWTAIL, VICE CHAIRMAN STEVE DOHERTY AND COMMITTEE MEMBERS.

MY NAME IS BEA STEEN. I OWN MY HOME AND HAVE LIVED IN THE GOLDEN ESTATES MOBILE HOME PARK HERE IN HELENA SINCE AUGUST OF 1983. I'M HERE TODAY BECAUSE I'M CONCERNED ABOUT THE POSSIBLE LAND USE CHANGE OF THE COURT I LIVE IN. WE HAVE BEEN TOLD THAT THE COURT HAS BEEN ON THE MARKET FOR THE LAST FEW MONTHS. WE ARE VERY VULNERABLE BECAUSE THE COURT IS LOCATED OUT NEAR THE WALMART WHERE THERE IS A LOT OF ACTION IN THE COMMERCIAL MARKET. WE COULD BE TARGETED FOR TARGET STORE RIGHT NOT. HOW IN THE WORLD WOULD WE BE ABLE TO GET OUR NOT SO MOBILE HOMES MOVED IN THE 30 DAYS PRESENT LAW ALLOWS. IF WE DON'T GET THEM MOVED THEY CAN CONFISCATE THEM. THAT'S JUST NOT FAIR OR JUST. THE LAWS WERE WRITTEN FOR THE RENTALS, SUCH AS TENANTS OF APARTMENTS, CONDO'S OR HOUSES. WE NEED LAWS THAT ADDRESS OUR OWN HOMES.

I REPRESENT MANY OTHER TENANTS, WHO WERE UNABLE TO BE HERE TODAY. MOST OF THEM ARE AFRAID TO SPEAK UP FOR FEAR OF RETALIATION, SO AM I, BUT I WILL NOT BE INTIMIDATED, EITHER. WE ARE CONCERNED ABOUT OUR RIGHTS AS MOBILE HOME TENANTS. I AM HERE THIS MORNING TO ASK FOR YOUR SUPPORT OF HB 245. THE LANDLORD/TENANTS LAWS NEED TO BE REVISED TO INCLUDE THOSE OF US WHO PREFER TO OWN OUR HOMES RATHER THAN LIVE IN APARTMENTS BUT CAN'T AFFORD THE HIGH COST OF A CONVENTIONAL HOME.

HB 245 Testimony  
page two

BETWEEN 1980 AND 1990 79% OF ALL NEW RESIDENCES IN MONTANA WERE IN THE FORM OF MANUFACTURED HOUSING WITH MOBILE HOMES LEADING THE WAY, AS AFFORDABLE HOUSING. MOBILE HOME RESIDENTS ARE OFTEN TREATED DIFFERENTLY (NEGATIVELY, I MIGHT ADD) BECAUSE OF HOW THEY LIVE.

WE'VE HAD SEWER AND WATER PROBLEMS FOR OVER A YEAR AND TENANTS ARE AFRAID TO SPEAK UP ABOUT POOR CONDITIONS THAT THEY ENDURE--AGAIN FOR FEAR OF RETALIATION OR EVICTION. WE NEED THIS BILL TO ASSURE US OF FAIR TREATMENT.

AS WE TOLD GOVERNOR RACICOT IN OUR DECEMBER MEETING--- WE ARE NOT AGAINST MOBILE HOME COURT OWNERS, FAR FROM IT, WE NEED THEM. BUT THERE ARE GOOD AND BAD ONES THE SAME AS WITH TENANTS. THE CRITERIA SET FORTH IN HB245 HELPS BOTH THE LANDLORD AND TENANT.

THIS BILL IS A COMPROMISE WITH THE LANDLORD'S ASSOCIATION, FOLLOWING SEVERAL MEETINGS WITH THEM.

WE ALSO BELIEVE RENT INCREASES SHOULD BE JUSTIFIED, NOT DOLED OUT SELECTIVELY--TARGETING SOME.

THERE ARE CURRENTLY NO LAWS SPECIFICALLY GOVERNING THE OVER 110,000 HOME COURT RESIDENTS STATEWIDE, THE MAJORITY OF WHOM OWN THEIR OWN HOMES.

HB 245 Testimony  
page three

LIKE ALL FEDERAL HOUSING CONTRACTS THE HELENA HOUSING  
AUTHORITY MUST SUPPLY "GOOD CAUSE" FOR EVICTION. AS GEORGE  
MARBLE, ADMINISTRATIVE OFFICER OF THE HELENA HOUSING  
AUTHORITY HAS STATED THE GOOD CAUSE FOR TERMINATION GIVES  
ALL PARTIES TO THE PROCESS THE SAME FOCAL POINT FOR ARGUMENT  
THROUGHOUT THE PROCESS, RELIEVING THE BANTERING-----ABOUT  
EXTRANEIOUS ISSUES" HE ALSO SAID "I CAN FIND NO EVIDENCE  
THAT THE HOUSING AUTHORITY HAS EVER HAD TO GO TO COURT TO  
ENFORCE AN EVICTION".

ALSO, WE NEED THIS BILL TO BE EFFECTIVE UPON PASSAGE TO  
ASSURE WE WON'T ALL GET EVICTION NOTICES, FOR SPEAKING OUT  
IN SUPPORT OF THIS LEGISLATION.

28 STATES HAVE GOOD CAUSE LEGISLATION AND MONTANA NEEDS TO  
BE #29. PLEASE SUPPORT HB 245.

THANK YOU

EXHIBIT 12  
DATE 3-19-93  
HB 245

STATE JUDICIARY COMMITTEE  
SENATE NO. 13  
DATE 3-19-93  
FILE NO. HB245

Mr. Chairman & members of the committee

I am Leslie McBirnie of West Yellowstone, I currently reside at the Overland West Mobile home court in West

In Oct. of 91 our court changed owners, the residents of the court were told then that the new owners intended to build a motel where we now call home. 2 years was the approximate date given. Currently their are not enough spaces available for the 9 mobiles to move to, as other courts have expressed interest in changing the use of their courts, mobile home owners of West have formed an association to work with city in order to alleviate the shortage of spaces, this takes time. We have no assurance the developer will allow us that time. If there is a problem in west trying to relocate 9 homes Imagine 10 or 20 times that number. having to move on a 30 day notice.

I cannot believe that some one doing a project of this size not being able to tell the people who are going to be affected in a reasonably timely manner the approximate date of start. As a change of use development in a mobile court is going to be a major project with considerable planning, courtesy demands a timely notice to the tenants who have been paying the bills. To say that a timely notice would squelch a sale, boggles the imagination.

I urge you to approve h.b. 245 as is, with no more changes.

I thank you for your time  
Leslie McBirnie

## SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

14

DATE

3-19-93

BILL NO.

HB245

HB245

Mr Chairman Members of the Committee

I Alice Janke, live in Lerley Acres, Belgrade, Mt. a 100 unit trailer court. A place where notes are taped to your door giving you rules of the court. I refer to your packet page 11.

In March 92 we were given notice to evict. The reason, no reason he doesn't need a reason or so he says. Our rent was paid, we had no dog, 1 child.

We fought him in court for almost 1 year. We paid our own lawyer costs amounting to \$12000. David Powell our lawyer. During that time we complained to the health dept about the garbage which always overflowed on the ground, because there are not enough dumpsters. Also a fitting on a septic line was completely unattached and had been for the last 6 years. Sewage would back up on the lawn the health dept sent us a letter about it. He ignored us.

In Jan 93 we won our case in court. On Feb 4<sup>th</sup> he gave us another note to evict. On March 7<sup>th</sup> the septic line again overflowed on the lawn. The same septic cap which we had complained about July 8<sup>th</sup> 1992, 9 months previous. Still not fixed.

When we called he asked when we would move. We told him we would move to a house. (17)

and it would be considerable retaliation. He  
Souted No! No! No! and hung up. On Monday  
he did empty the septic tank. I called the  
health dept about the loose dog. She said,  
"I have no authority to issue a fine but I  
will talk to him." On Wednesday he fixed  
it. 4 months after a Complaint.

We need Good Cause Eviction. House Bill  
375. So that we can complain about sewage  
on the lawn without fear of eviction.



MONTANA STATE LEGISLATIVE COMMITTEE



CHAIRMAN  
Mr. Gene Quenemouen  
806 Frank Road  
Belgrade, MT 59714  
(406) 388-6932

VICE CHAIRMAN  
Mr. Robert J. Sounrads  
315 10th Street West  
Columbia Falls, MT 59912  
(406) 382-4642

SECRETARY  
Mrs. Florence R. Cosier  
312 Cook Street  
Lawtown, MT 59467  
(406) 503-2674

Bringing decades of experience and  
leadership to serve all generations.

SENATE JOINTLY COMMITTEE  
EXHIBIT NO. 15  
DATE 3-19-93  
BILL NO. HB 245

AARP Testimony

Mobile Home Bill HB 245

March 19, 1993

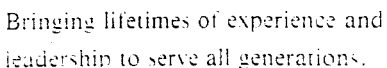
Mr. Chairman & Members of the Committee:

For the record I am William (Bill) Olson and I am a member of the State Legislative Committee for The American Association of Retired Persons(AARP). AARP has approximately 110,000 members in the State of Montana - one in every eight persons in the state. Our members are 50 years of age and older, and many(number unknown) reside in Mobile Home Parks.

AARP policy, both Nationally and Statewise, is that states and localities have an essential role to play in expanding housing option for older persons and protecting their rights as housing consumers. Identifying regulatory barriers and developing action plans to improve housing conditions are included in action to be taken by states and localities.

AARP advocates that legislation be enacted to protect the rights of older(as well as younger) mobile home owners to include the following:

1. Protection against unfair evictions.
2. Requiring written long term leases.
3. Posting of and tenant participation in formation of Park Rules
4. Prior notice of Rent and Fee increases.



CHAIRMAN  
Mr. Gene Quenemoen  
606 Frank Road  
Belgrade, MT 59714  
(406) 388-0982

**VICE CHAIRMAN**  
Mr. Robert J. Souhrada  
915 13th Street West  
Columbia Falls, MT 59912  
(406) 892-4642

SECRETARY  
Mrs. Florence R. Coslet  
312 Cook Street  
Lewistown, MT 59457  
(406) 538-2674

5. Full disclosure in plain English of Rents, Fees  
Charges and assessments.

AARP's state legislative committee for Montana believe that HB 245 address~~e~~'s many of these issues and urges its passage.

Thank You.

William Olson



RESIDENTS RALLY AT TRAVOIS VILLAGE

# Owner stands by rules

By GINNY MERRIAM  
and GARY JAHRIG  
of the Missoulian

**R**esidents of Travois Village mobile home park who are upset about the 11 pages of rules that will go into effect at the park Aug. 1 are a vocal minority who "want to make the park a pigpen," owner Jim Moore said in a telephone interview from his California office Monday.

"Most of the people in the park are extremely happy with the new ownership," Moore said.

Nevertheless, about 175 Travois residents turned up at a rally in the trailer park Monday evening to voice their displeasure with the new owner, his rules and the general operation and upkeep of the 270-unit complex.

"He's taken it upon himself to violate several of our rights," said Julie Marthaller, one of several residents who spoke at the rally. "This is still the United States of America, I think."

Signs proclaiming "Mr. Moore this ain't no California," "Don't make up laws" and "My dog is part of the family" were prevalent as speakers criticized rules banning gardens, dogs over 20 pounds and hanging laundry outside overnight.

City Council member Donna Shaffer said she was at the rally to represent the people of her ward. However, she admitted other than writing a letter to Moore, there was probably little the city could do to fight the new rules.

"I'm just here to try to find some logic in these rulings," Shaffer said.

Organizers of the rally said they hoped to sign up more members of the Travois Residents Association, which was formed last week.

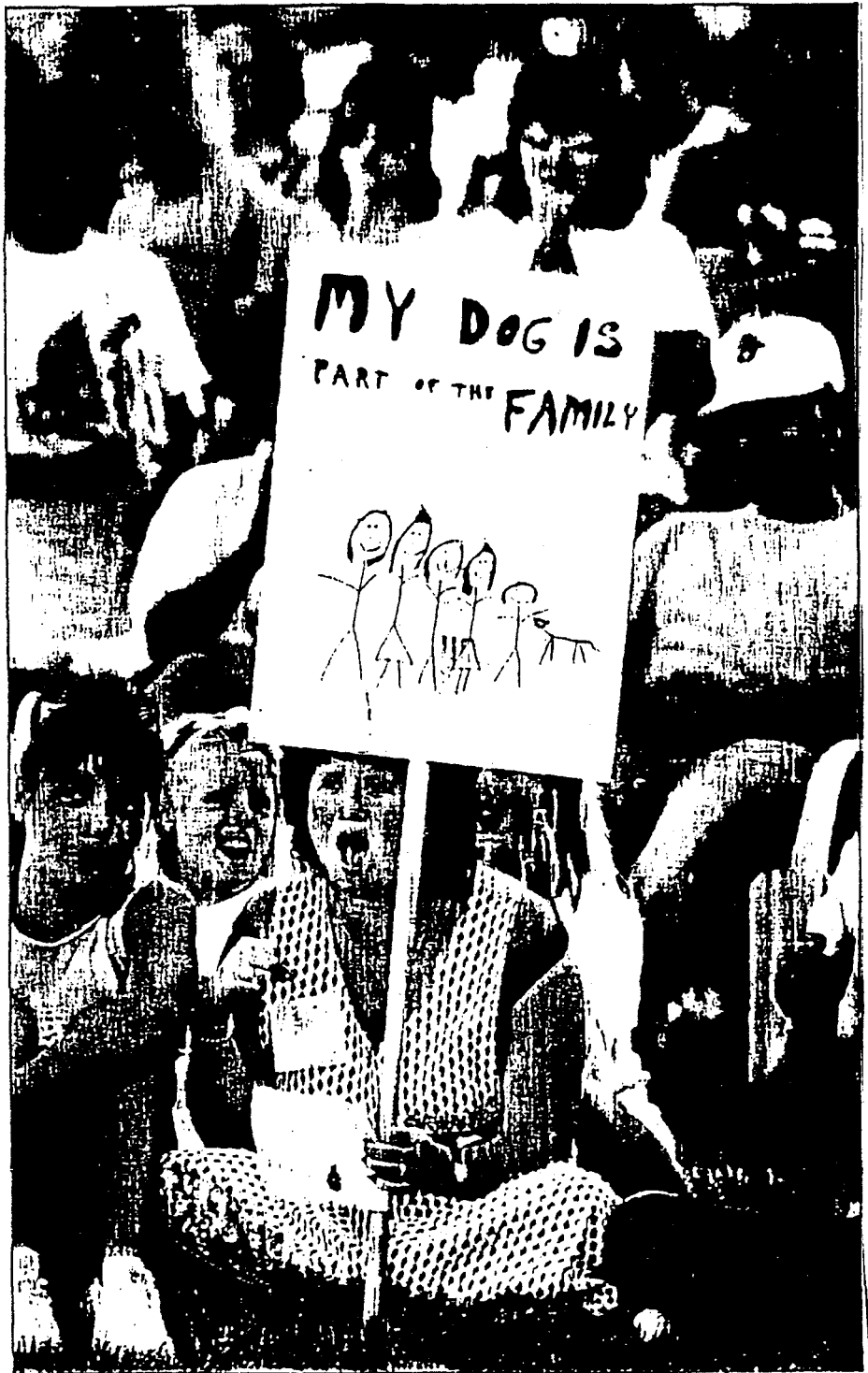
In an interview earlier Monday, Moore said most of the residents are rule-abiding and responsible, but "we've got some redneck people in there" who don't care about the appearance of the property and wouldn't be happy with any rules the owners wrote, he said.

Moore was responding to a Saturday Missoulian story about a Friday night meeting of about 20 park residents who are dissatisfied with the new rules and park maintenance.

Moore said the goal of the rules is to improve the park and make it a better place to live. Behind every rule is a reason, he said.

For instance, behind the ban on vegetable gardening: "They might like it, but to a lot of their neighbors, it's very unappealing and very unsightly," Moore said.

Also, tall corn could block a neighbor's view, he said. And vegetable gardening drives up the water bill, which the park pays.



KARIE HINKLE EXPRESSES her anger Monday evening during a rally for residents of Travois Village trailer park to protest new rules at the park. Among the rules is one that bans dogs over 20 pounds.

Behind the requirement that laundry be taken off clotheslines by sunset: "For one reason, it looks unsightly," said Gary Lenhart, Moore's general property manager, who was in on a conference call with the Missoulian.

"I don't see anything wrong with that," Moore said. "I think it's a good rule." Laundry left out overnight might be left out longer and "you might have to look at someone's underwear for a week," he said. It might also be stolen.

Moore and Lenhart said the residents' charge that park manager Len "Bud" Keller was

going underneath mobile homes to enforce the rule that only certain things could be stored there was untrue. They said residents could store whatever they liked under their trailers as long as it met safety codes and the skirting hid the objects.

In a lengthy conversation with the Missoulian, Moore and Lenhart addressed each rule residents complained about and repeatedly said they merely want to raise the standard of living for park residents.

"Most of the rules we have are for their benefit and protection, not mine," Moore said.

He said that when he bought

the park in January, along with Farviews park, it had been neglected while in bankruptcy for four years.

Lenhart said he spoke with residents' association spokesman John Marthaller by telephone Friday.

"I told them next time I was in town I'd be happy to meet with them," he said.

Moore said if residents showed him how a change in any rule would benefit most of the residents, he'd revise the rule.

"We, for the life of us, can't see any problems with any of the rules for the majority of the

**DOCUMENT RECEIVED FROM TRAVOIS VILLAGE MANAGEMENT  
ON MARCH 15, 1993 - MISSOULA, MONTANA  
(SURVEY TOOK PLACE EARLIER)**

I wanted to take a moment to ask you to complete the following survey.  
If you do not want to be involved, the person conducting the survey will  
kindly walk away at your request. If you elect to complete this survey,  
I want you to understand that this information may be evidence in a lawsuit.  
Please answer the questions to the best of your ability and knowledge. I  
want to assure you that your residency will not be in jeopardy if you do not  
want to be involved. We have never retaliated, discriminated, or evicted  
someone based on their affiliation with the "Travois residents association"  
or "Montana peoples action. Thank-you for your time.

- 1.) DO YOU CONSIDER YOURSELF TO BE A MEMBER OF THE TRAVOIS RESIDENTS  
ASSOCIATION /MONTANA PEOPLES ACTION?

T.R.A. \_\_\_\_\_

M.P.A. \_\_\_\_\_

- 2.) DID YOU COMPLETE A MEMBERSHIP FORM?

YES NO

- 3.) DID YOU PAY A MEMBERSHIP FEE? IF SO HOW MUCH WAS THE FEE?

DO YOU PAY YEARLY OR MONTHLY DUES?

PAID MEMBERSHIP FEE- YES NO

COST OF FEE \$ \_\_\_\_\_

MONTHLY - YEARLY

- 4.) WHY DID YOU BECOME A MEMBER OF THE TRA/MPA?

\_\_\_\_\_  
\_\_\_\_\_

- 5.) WHEN DID YOU LAST HAVE CONTACT WITH TRA/MPA?

\_\_\_\_\_

- 6.) HOW MANY TRA/ MPA MEETINGS HAVE YOU ATTENDED?

0-5 7-15 20 plus

6-10 16-20

- 7.) IN YOUR OPINION WHAT PURPOSE DOES THE TRA/MPA SERVE?

\_\_\_\_\_  
\_\_\_\_\_

- 8.) ARE YOU AWARE OF THE CLASS ACTION LAWSUIT THAT TRA / MPA HAVE FILED  
AGAINST TRAVOIS VILLAGE MOBILE HOME COMMUNITY? YES NO

- 9.) THIS LAWSUIT MAY INCLUDE YOU AS A PART OF ITS CLASS ACTION. THE PERSON  
CONDUCTING THE SURVEY HAS A LIST THAT WAS SUBMITTED IN COURT AS EVIDENCE TO THIS  
CLAIM OF "CLASS STATUS". PLEASE REVIEW THE LIST AND SEE IF YOUR NAME IS  
ON IT. IF IT IS AND YOU WANT TO WITHDRAW YOUR NAME, PLEASE CALL  
JIM O'BRIEN AT 721-0660 . HE IS THE ATTORNEY FOR TRA/MPA.

- 10.) IF YOU HAVE KNOWLEDGE OF THE LAWSUIT, DO YOU KNOW WHAT THE ALLEGATIONS  
ARE?

\_\_\_\_\_  
\_\_\_\_\_

- 11.) ARE YOU IN AGREEMENT WITH THESE ALLEGATIONS? YES NO

- 12.) HOW ARE YOU MADE AWARE OF THE STATUS OF THE LAWSUIT?

\_\_\_\_\_

- 13.) ARE YOU IN FEAR THAT BY DISCLOSING YOUR MEMBERSHIP WITH TRA/MPA THAT YOU  
WILL BE EVICTED? YES NO PLEASE EXPLAIN.

\_\_\_\_\_

- 14.) DO YOU BELIEVE THAT MANAGEMENT/ OWNER HAS TREATED YOU FAIRLY?

YES NO

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

JUD  
NO  
16  
3-19-93  
HB245

MR. CHAIRPERSON AND COMMITTEE MEMBERS

DATE 3-19-93

BILL NO. HB 245

MY NAME IS CINDY MOREE. I AM A STATE LEADER FOR MONTANA PEOPLES ACTION FROM TRAVOIS VILLAGE IN MISSOULA

WE BELIEVE THAT EVICTIONS FOR MINOR RULE INFRACTIONS MAY BE TOO SEVERE. MY PARK WAS BOUGHT BY AN OUT OF STATE OWNER. WHEN THEY TOOK OVER WE WERE GIVEN ELEVEN PAGES OF RULES AND REGULATIONS WITH MANY OF THEM BEING UNFAIR AND UNREASONABLE.

HERE IS A HYPOTHETICAL SCENARIO. SEE PAGE 14 IN YOUR PACKET

IT IS AUGUST. MY BOYS ARE OUT RIDING THEIR BIKES. I CALL THEM IN FOR DINNER. THEY DUMP THEIR BIKES AND COME IN. WE FORGET THEY LEFT THE BIKES OUT AND THE NEXT DAY I GET A NOTICE SAYING I BROKE RULE #5, PAGE 9.. BICYCLES, ARE NOT TO BE LEFT OUTSIDE BUT MUST BE STORED IN THE HOME OR SHED.

THEN A MONTH LATER I HANG MY CLOTHES ON THE LINE AT 11 IN THE MORNING. I GO TO WORK AT 1PM. I COME HOME AND WITH IT BEING DARK I FORGOT TO BRING THEM IN. THE NEXT DAY I GOT A NOTICE THAT I BROKE RULE #7, PAGE 6. THAT'S MY SECOND VIOLATION.

THEN SUPPOSE TWO MONTHS LATER MY SIXTEEN YEAR OLD BOY COMES HOME AT 10:30 AT NIGHT. ACCORDING TO RULE #4, PAGE 9, THIS IS A VIOLATION AND BEING THE THIRD IN LESS THAN 12 MONTHES I COULD BE EVICTED. EVICTIONS ARE TOO EASY THIS WAY AND A VERY STRONG POSABILITY, ESPECIALLY PEOPLE LIKE MYSELF WHO ARE VERY BUSY WORKING FOR RESIDENT'S RIGHTS.

THAT'S WHY WE BELIEVE EVICTION FOR ANY RULE MUST BE FOR THOSE RULES CARRYING A SIGNIFICANT ADVERSE IMPACT. PLEASE SUPPORT HB 245.

1  
MY NAME IS CHERYL BURPEE V.A.  
EMPLOYEE.

MY HUSBAND + I are here in favor of  
tenants rights. We have 3 children.

IN 1991 we had lived at Prairie Mobile  
Village for approx 7 yrs. owned own Mobile Home

Always clean, neat, no loud music.  
children worked for landlord.

The last week of August I was  
entering my 3rd year of Nursing  
AT Carroll College.

3 days before class started  
we recieved an eviction.

NO REASON HAS TO BE GIVEN.  
However the landlord did say  
it was because other tenants  
were complaining about our  
children.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 18

DATE 3-19-93

FILE NO. HB245

2  
I asked what they had  
done. He said:

- one climbed a tree.
- one walked across someones  
lawn

Supposedly they had committed  
these crimes 6 months before  
We tried to fight it. The  
stress was too much.

I had to drop a major  
10 credit course.

We moved to another court.  
at <sup>1</sup> MILE away.  
at the expense of 3 thousand  
dollars.

AT THE NEW COURT we kept our  
place clean. We gave away our dog  
which was 2 inches too tall. We  
abided by the rules.

3  
IN THE SPRING of 1992 we  
recieved another eviction NOTICE  
REASON: our GRASS WASN'T GREEN  
ENOUGH.

AGAIN WE PACKED our Belongings  
AND moved. AT THE EXPENSE of  
approx 3 thousand. dollars.  
my HUSBAND will follow.

This Law needs to be passed.  
to protect the rights of decent  
Law abiding citizens.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 19  
DATE 3-19-93  
FILE NO. HB245

\$10,000 and rising. Shows the total of my current legal costs incurred in fighting eviction of my mobile from the rented space it rests on. My total monthly income is \$637<sup>00</sup> Soc. Sec. Disability. I will have assumed a lifetime of debt. Trying to keep my home. I'm a superior tenant. I made the mistake of helping to create the Boyeman Mobile Home County Tenants' Assoc. to improve my living environment. When I spoke out publicly about issues affecting myself & other tenants my troubles began. I was sued & ordered to vacate.

Research of the Tenant-Landlord Act showed just how neglected this area of concern is. In the last 16 years no new laws have been enacted to cover changing conditions.

Without a deterrent the unethical landlord will continue to do as they have done for decades: business as usual, and evicting people without good cause.

The Landlords Assoc., and others,



who oppose HB245 do so in direct  
relation to their financial interests,  
not to the welfare of the very people  
who they make their living off of.

Nancy Collins  
1000 N 17<sup>th</sup> Ave #238  
Bozeman, Mt.

# *Tippy & McCue*

ATTORNEYS AT LAW

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 3-19-93

HB 245

*Roger Tippy*

*Mary Kelly McCue*

1215 Eleventh Avenue

P.O. Box 543

Helena, Montana 59624

406-442-4448 FAX 406-442-8018

DATE: March 19, 1993

TO: Members, Senate Judiciary Committee

FROM: Mary McCue  
Lobbyist for Mobile Home Park Owners Group

RE: House Bill 245 providing "good cause eviction" of mobile home tenant

## **Introduction**

House Bill 245 is unnecessary; numerous portions of the bill simply reiterate various provisions of the Montana Landlord and Tenant Act. Other provisions of the bill conflict with present law, making it impossible to determine which provision would apply to a particular circumstance.

## **Compare House Bill 245 with Present Provisions of the Montana Landlord and Tenant Act**

Please consider the following:

Section 1 of HB 245 amends section 70-24-103, MCA, to provide definitions for a "mobile home owner" and "mobile home park".

Section 70-24-103, MCA, presently includes the person renting space in a mobile home park in the definition of "dwelling unit", thus making it clear that the Landlord-Tenant Law includes persons entitled to occupy a mobile home park space.

Section 2(1) of HB 245 limits the grounds on which a mobile home park may terminate a rental agreement. Those grounds are:

(a) nonpayment of rent

Section 70-24-422, MCA, presently allows a landlord to evict a tenant for nonpayment of rent.

(b) violation of a mobile home park rule

Section 70-24-422, MCA, presently allows a landlord to evict a tenant for violation of a park rule.

(c) disorderly conduct

This section is unneeded because as a practical matter a tenant's disorderly conduct will likely violate a park rule which can lead to termination under section 70-24-422, MCA.

(d) conviction of a federal or state law or local ordinance

HB 245 seeks to establish exclusive grounds upon which a landlord may terminate a rental agreement.

Section 70-24-431, MCA, provides that a landlord may not retaliate against a tenant by increasing his rent or evicting the tenant from the mobile home park if the tenant complains of a violation by the park owner of a health or building code. The section also provides that the landlord may not evict a tenant who complains to the landlord for not keeping the premises safe and habitable, complying with building and housing codes, or maintaining utilities in safe and working order. Nor may the landlord evict a tenant for organizing or becoming a member of a tenant's organization.

Section 2(2)(a) of HB 245 provides that a mobile home owner or tenant who fails to pay overdue rent within 15 days of notice of nonpayment is subject to termination.

Section 70-24-422(2)(b), MCA, presently provides that if a mobile home park tenant fails to pay rent when due, he may be subject to termination after 15 days of written notice.

Section 2(2)(b) of HB 245 provides that a mobile home park owner may terminate a mobile home tenant's rental agreement if the tenant has received more than two written notices of late rent payments within a 12 month period. When the tenant receives the second late rent notice, he is placed on probation for 6 months. If

Section 70-24-422(2)(b), MCA, presently provides that a landlord may terminate the rental agreement of a mobile home park tenant if the tenant fails to pay the rent within 15 days of written notice of nonpayment. The statute does not allow the tenant to repeatedly fail to pay his rent on time before eviction.

EXHIBIT 20  
DATE 3-19-93  
HB 245

he is late with his rent during that period, he may be terminated. This provision conflicts with the present law on termination for late payment of rent, section 70-24-422(2)(b), MCA.

Section 2(3)((a) of HB 245 allows a landlord to evict a mobile home park tenant who violates a park rule. But the landlord cannot evict the tenant unless he violates the same rule at least three times. This means that if the park has a set of 25 rules, the tenant could violate 50 times before facing the prospect of eviction. The section establishes a separate procedure for eviction of a tenant who violates a park rule that has a significant adverse impact on the park or its residents. The portion of this proposed new section relating to eviction for rule violation is cumbersome and conflicts with present provisions relating to eviction due to the tenant's noncompliance with the rental agreement.

Section 70-24-422, MCA, presently contains a provision allowing for eviction due to noncompliance of the rental agreement. Generally, a rental agreement would require the tenant's compliance with park rules. The present section establishes a procedure for notice and the landlord's subsequent right of termination.

#### **Other Provisions Protecting the Tenant**

The Montana Landlord and Tenant Act has numerous other provisions which provide adequate protection to a mobile home park tenant.

- Section 70-24-303, MCA, states that a landlord must comply with all applicable building and housing codes that affect the safety and health of tenants and make repairs and do whatever is necessary to keep the premises fit for habitation. Under that section the landlord must also keep all common areas clean and safe and keep all utility facilities in good and safe working order. The landlord also must maintain appropriate receptacles for garbage and arrange for its removal.
- Section 70-24-408, MCA, gives remedies to a tenant if the landlord fails to provide essential utility services.
- Section 70-24-411, MCA, provides that if a landlord unlawfully

removes or excludes the tenant from the premises or diminishes some essential service to the tenant, the tenant may recover possession of the premises or end the rental agreement. Under this section, the tenant also may recover up to 3 months' rent as damages for such wrongful action by the landlord.

- Section 70-24-428, MCA, prohibits a landlord from forcing a tenant from the rental by purposefully diminishing services by interrupting heat, running water, hot water, electricity, gas, or other essential services.
- Section 70-24-442, MCA, also provides further protection to the mobile home park tenant. The section states that in any legal action brought concerning a rental agreement, the prevailing party is entitled to recoup reasonable attorney fees and the costs of pursuing the lawsuit. This statute is another source of protection for a tenant who has been treated unjustly by his landlord.

These are only several of the numerous provisions of the landlord tenant laws which contain remedies for a tenant who is experiencing problems with a landlord.

EXHIBIT NO. 211  
DATE 3-19-93  
BILL NO. HB245

TESTIMONY ON HOUSE BILL 245 BEFORE THE SENATE JUDICIARY COMMITTEE

FRIDAY, MARCH 19, 1993, ROOM 325, 10:00 a.m.

Mr. Chairman, members of the committee, my name is Greg Van Horssen. I am here this morning on behalf of two organizations, the Income Property Managers and Owners Association of Montana and the Montana Landlords Association. Together, these two groups comprise around 1500 members and the groups administer over 53,000 rental units in the state. The organizations are dedicated to providing safe and, importantly, affordable housing to a large segment of Montana's population.

The IPMA and the MLA strongly oppose House Bill 245 for three reasons:

1. The majority of the bill already exists in law;
2. The bill creates a severe burden on a property manager's ability to make critical business decisions;
3. The "change of use" portions of the bill pose significant problems.

Prior to expanding upon these reasons, it is important to recognize a few important points about an individual's decision to provide housing in the form of a mobile home park. The operator of a mobile home park, it should be noted, operates a business. Presumably, that individual has decided to develop the mobile home park on his or her own or has purchased an on-going enterprise. Built into the decision to provide mobile home park housing is the assumption that the owner will have control over important business decisions affecting the profitability of the

enterprise and affecting the quality of services offered to the tenants.

House Bill 245 destroys all assumptions that the owner of this type of business will be able to control certain critical business decisions. The bill represents a serious attack on a mobile home park operator's ability to control a business and, just as importantly, makes it virtually impossible for the owner to guaranty a pleasant and affordable living environment for all tenants.

With respect to our first reason for opposing this bill, Ms. McCue has already adequately covered our position that the language of House Bill 245, for the most part, already exists in current law. I will not be redundant on this issue and simply echo Ms. McCue's comments on that concern.

Our second reason for opposing this bill, is that the bill creates a severe burden on a property manager's ability to make critical business decisions. In this regard, I refer to that portion of the bill that provides that a property manager may only terminate a rental agreement for the nonpayment of rent or late charges after the tenant has paid rent late three times. On this issue, I would like to note that the operation of a mobile home park is not generally recognized as a business with an extremely high profit margin. In the context of the mobile home park, as with any business, it is important to be able to forecast both the timing and the amounts of income in order to properly operate the business. This is particularly true in the

context of a business which provides residential space and services to its clients. With that in mind, to pass a bill which makes it perfectly legal for every resident in a mobile home park to withhold rent twice per year, will have a serious impact on the operation of the mobile home park. Additionally, this type of legislation will undoubtedly result in increased rental rates in the park given the fact that the property manager will need to count on the individuals who pay their rent in a timely fashion to cover for those individuals who take advantage of this legislation.

This bill will also allow each individual member of the mobile home park to violate each rule up to three times before facing even the possibility of eviction. This type of legislation removes from the landlord the ability to rid the community of rules violators. Of particular concern on this bill is that the tenant could not be evicted until the tenant has violated the same rule three times. In other words, if the mobile home park has adopted 50 rules, a problem tenant could conceivably violate 101 rules in a year's time before the property manager had any right whatsoever to evict that tenant. The real cost of this portion of the statute will be to the other tenants in the park.

The bill does provide that if a tenant violates a rule that creates "an immediate threat to the health and safety of any resident of the mobile home park", the agreement could be terminated within 24 hours. However, the determination as to which violations create "an immediate threat to the health and



safety of any resident" is quite difficult and, subject to any number of interpretations.

Interestingly, the third reason to allow the termination of the rental agreement is for disorderly conduct that results in, among other things, disruption of peaceful enjoyment, endangerment of other residents, or damage to the mobile home park premises. However, the statute would not allow the termination of the rental agreement for the violation of a rule that would have the similar effect on other residents.

Nor would a property manager be allowed to remove a problem renter for the violation of a state or federal law or local ordinance unless the violation is detrimental to the health, safety, or welfare of other residents in the park. I would submit to the committee that many violations, while disruptive to the rights of others in the mobile home park may not be detrimental to the health, safety, or welfare of other residents. In this regard, it will be quite difficult for the property manager to determine whether he is acting appropriately under this statute.

Also under subsection (d) on page 5, line 19, a landlord is required to document a violation of the provisions of Montana's criminal code in order to justify the termination of the rental agreement. This turns our property managers into private detectives and raises a concern as to whether any amount of documentation can be evidence of the violation of a criminal statute absent a judicial determination. In other words, that

"good cause" reason for terminating the rental agreement is probably unworkable.

The third reason for my organization's opposition to this bill involves the notice of change of use issue. House Bill 245 provides that if the landlord plans to change the use of all or part of the land composing the mobile home park, he must give individuals six months' notice of the intent to do so. Additionally, that six months' notice is in addition to the time necessary to procure any permits necessary to effect that change. This, of course, has a serious impact on a property manager's ability to make any changes in the park that might be necessary to the enjoyment of the residents if those changes would require the movement or removal of any mobile homes. In particular, I speak of changes a property manager might make to enhance the facility such as the creation of common areas or the widening of roads, all of which would benefit the tenants but may require a potential change in use. In this way, House Bill 245 would seriously impact a property manager's ability to serve mobile home park clientele in a timely fashion.

The six-month notice provision is particular concerning when permits might be required to effectuate a change in use. Under House Bill 245, the six-month notice would have to be given after all permits are obtained. This means that if the permit process takes a year, it would be at least 18 months before a landowner could actually realize a change in use on the property. This, of course, has a serious affect on a property manager's ability to

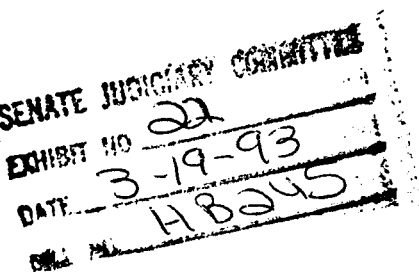
change the use of his or her real estate in whole or in part. I would also submit that this type of provision has a serious affect on an individual's decision to invest in the business of a mobile home park.

In that regard, while House Bill 245 is probably well intentioned with respect to guaranteeing adequate space in mobile home parks, the effect of the bill is probably quite to the contrary. In fact, if House Bill 245 is made law, I would submit that, due to the lack of willingness to enter into a business with this many constraints on it, the number of mobile home parks in Montana will quite probably decrease.

Thank you for this opportunity to address the committee.

Gregory A. Van Horssen

GVH/gv



Testimony  
of Oakland Holding Company

H.B. 245

Senate Judiciary Committee  
March 19, 1993

Mr. Chairman and members of the Committee, my name is Terry Cosgrove, and I am here on behalf of Oakland Holding Company, which owns a trailer court in Bozeman. I am here today to oppose the passage of H.B. 245. That bill in its statement of intent provides that there is a crisis in being able to find available mobile home spaces. This bill has the effect of making it even more undesirable for someone to consider the building of any new mobile home parks, thereby creating the exact problem it is trying to correct.

Again in the statement of intent, the bill states that mobile home owners may be forced to sell their home at a fraction of its cost because, if their rental agreement is terminated, they may only have thirty days to find another spot to rent.

To cure this problem, this bill provides that a mobile home owner can not terminate any mobile home agreement unless it is for one of the five reasons that are listed in the bill. The problem is that, in an effort to correct what is seen as a problem regarding the time a mobile home tenant would have to find another location, this legislation has denied substantial rights to the owner of the park. There are presently in effect statutes which would prohibit a landlord from evicting someone because of race, color, marital status and the

other protected rights. Section 49-2-305, MCA, provides very clear mandates that it is unlawful to discriminate in the rental of housing, including mobile home parks. Those statutes already exist, and this statute is not necessary.

Under this proposed statute, a landlord even if he has a legitimate and justifiable business reason for terminating a rental agreement would be prohibited from doing so. Such business reasons could very likely benefit both the park owner as well as the tenants. That is unfair; the owner should have the right to terminate the rental agreement of any tenant, as long as such action is not a form of discrimination or otherwise illegal. This legislation takes away the rights of landlords to change or modify their existing parks for legitimate business reasons. This legislation creates a new type of tenant, one that now enjoys special rights and privileges over tenants in other types of rental situations.

If the problem is that 30 days is not enough time for a tenant to find another rental location, then perhaps a more reasonable solution would be to provide that if the landlord is going to terminate the rental agreement for any reason other than one of the five listed in the proposed statute, then the landlord would be required to give the tenant 60 days' notice. This additional period should ensure that a tenant is not forced to sell the home just because he has to move. What is not reasonable is to tell a landlord that because it may be difficult to locate other mobile home spaces,

the owner has lost the right to make the necessary business decisions regarding his property. This statute is unfair and, in my view, constitutes a taking of property without due process.

I would also suggest that the existing language as to how many violations it takes to allow an eviction is so confusing as to be almost beyond understanding. The wording should be amended so that anyone can read the statute and readily understand what is necessary to evict someone for cause.

If the true concern of the proponents is that landlords are not complying with existing laws, then appropriate action should be taken against the owner, but this statute goes too far and is not the appropriate answer.

I would suggest that if what is necessary is to provide some additional time for a tenant to find a space, that such language could be fashioned to meet that particular need and that the committee consider assigning this bill to a subcommittee to meet with the parties to see if that type of reasonable language could be inserted into the bill. The last thing that these proponents want is to reduce the number of mobile home spots that are available, but with this type of legislation, that is exactly what will happen.

22  
3-19-93  
HB 245

## ATTENTION FOREST PARK TENANTS

STATE HOUSE COMMITTEE  
23  
3-19-93  
HB0245

I am asking for your support in opposing the current bill that is being put in front of the Senate on Friday March 19, 1993. This bill HB0245/03 in substance says:

That upon notice of eviction, a Tenant can occupy the mobile home park space for a period of six months. During this time said Tenant will have the freedom under this bill to do as he pleases to his space and his property without regard to his neighbors or other Tenants.

We as Tenants will suffer under such a bill, because no one will have the ability to enforce the rules and regulations that all of us agreed to when we moved into the park. I am sure that all of the Tenants in Forest Park intended to be honest and truthful when we agreed to rent our lot spaces. Why, then, should we have to suffer with possible future rent increases, and stricter park rules because a few deviant individuals have decided they do not want to pay their lot rents or follow park rules.

If this bill is enacted and we decide to sell our mobile homes most likely the property values of our homes will drop because of the appearance of a few tenants spaces that aren't kept up because they don't want to follow the rules and keep their spaces clean, pay their rents on time, and control their animals, because under this bill they will have six months to do as they choose on the lot, before they will be required to leave.

Under the law we are required to inform any real estate agency trying to sell our homes that (1) that we live in a bad neighborhood (2) if there are any existing problems. (3) if there is a high vandalism rate in the area. I would not like to live in a bad neighborhood -with dogs running loose, loud parties and music, and people not keeping up their lot spaces..

In a nut shell, why should we the Tenants of Forest Park have to suffer because of a few people who do not want to live up to the responsibility of their lease and abide by the rules and regulations that they agreed to obey when they moved into the park. We already have a nice community, lets strive to keep it that way.

As the President of the Tenants Association in Forest Park I am opposing the current bill HB0245/03 and I am asking for your support. I don't feel that we the Tenants and our local government should have be a baby-sitter to people who don't want to live in a neighborly manner in their mobile home park community..

If a Tenant has the right to violate rules and they must be given two or more warnings and still continue to stay in the park for up to six months before eviction, then I believe the neighbors located around such a tenant are themselves being victimized.

Sincerely yours,

  
Craig Draper  
President Forest Park Tenants Association

OPPOSING SIGNATURES TO HOUSE BILL HB0245/03  
FOREST PARK TENANTS

Larry Wilson  
 Craig & Janice <sup>#195</sup>  
 Michael C. L.  
 Leandra M. Phillips E-9  
 Debbie Jeffries  
 Lou Jeffries  
 Karyn Lyle  
 Jeffery Allen Petty E-1  
 Charles Phillips  
 John & Cathy Hargis  
 James Hargis  
 Jill Hargis  
 John Hargis  
 John Hargis

Harry Lyle  
 Joe & Betty Hoffman  
 Douglas W. Froe  
 Connie L. Sparks #198  
 James C. Bush  
 Paul H. Hargis  
 Susan L. Margulies  
 Todd D. Hargis  
 Sherry S. Hargis  
 Laura Lyle

SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 24  
 DATE 3-19-93  
 BILL NO. HB0245



R. Christopher Maedje  
P.O. Box 336  
Alberton, Montana 59820

March 12, 1993

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 25  
DATE 3-19-93  
FILE NO. HB245

Dear Senator,

I am writing concerning HB 245. Although I do not oppose the entirety of the mobile home park and tenants rights bill, I strongly oppose aspects of the bill.

My objections are as follows:

I purchased a mobile home on a lot in California some years ago as a home and as an investment. At the time, I could not afford a regular home. As well, I hoped to eventually resell my mobile for a higher price. The market conditions were excellent at the time.

However, soon after my purchase, a group similar to the People's Action Incorporated of Montana, came into California and helped tenants like myself push through a "Good Cause" eviction bill.

They told us if the bill passed, us tenants would possibly be able to purchase mobile home parks from the owner's because it was thought the owner's would not want to hassle with the regulations imposed upon them by the new law. We would supposedly have more control over our circumstances and the park itself even if we were not able to purchase the park. We cheered, wrote letters to the state assembly, rode buses to committee hearings, and held banners on the Capitol steps for photographers.

The bill passed almost in its entirety, but soon our troubles began.

Within a year the mobile home parks in the area began to deteriorate. The owners were not able to enforce the rules or realistically evict bad tenants. Soon after "Just Cause" went into affect there were blasting stereos at midnight, beer cans laying on lawns, car parts strung over yard fences-- the park I lived in became a mess and there was little the management could do about it.

I and other tenants regularly asked management to enforce the rules, but management was essentially limited to writing letter after letter without any real result. Whereas before "Just Cause" the park was beautiful.

As such, it became poignantly and immediately clear what a mistake it was to for us to have helped such legislation become law. Roughly one year later and as head of a tenants committee we formed, we jokingly referred to the good cause law as "a good cause, that is, if you're a bad tenant."

"Just Cause" was financially detrimental as well. For some time I had wished to permanently reside in Montana. However, when I went to sell my mobile home, I had planned on selling it in what was at one time a well-kept and nice place to live-- a nice park adds to the value of a mobile home. And as my conversation with other mobile home owners in

fact sold in mobile home parks and not moved to another site.

However, when I went to sell, people who came to look at my mobile would tell the realtors showing my place, "great house, we want it, but not with those neighbors across the street." I was unfortunate enough to be across the street from one of the regular violators of the park rules-- living across from bad tenants and with the "Just Cause" law in effect-- the value of my home decreased.

I eventually sold for just \$1900 more than I purchased the home for five years previously. Before "Just Cause" went into effect, the mobiles in that park and other parks in the area had been appreciating at a rate of about \$1500-2500 per year. "Just Cause" ended my hopes to in fact increase the equity in my mobile.

Obviously, the California market values increased more readily than Montana, but it appears the same is occurring in Montana now days.

I had planned on purchasing a mobile in a park this year, but I absolutely refuse to do so if this law goes into affect. I can not afford land or a house, and I am trying to do what I and many others have tried to do through living in mobile homes, and that is, make the transition to a regular home someday.

I agree there may need to be some additional time to sell a mobile, and I believe there exists a balancing act between the right of park owner to receive income from their investment and the right of a tenant to be dealt with reasonably and with some dignity. However, and speaking from experience, "Just Cause" is not a solution.

Further, as I read HB 245, and having experience in legal research and writing, I believe the language is a litigation nightmare. It compels owners to litigate with tenants and tenants to litigate with owners.

A better answer would be to seriously strike HB245 of its litigation language. My opinion here is that if the tenant and landlord knows beforehand what park rules are and what the terms of the rental agreement are, courts are unnecessary to adjudicate whether or not a rule was "reasonable" [Section 2, sub-section 3a(1)].

Straight forward rules, straightforward rental agreements-- Keep it out of the courts and keep it simple.

In short, if HB 245 is not severely amended to allow owners to enforce the rules of the park without long time delays of multiple notifications and eventually having park rules subject to "reasonable" interpretation by Courts, the same thing will occur that occurred in California-- you'll be hearing from tenants again. Only this time they will be asking you to do what I asked the California assembly to do-- remove just cause from the code and start over with something different. And in fact, if you examine California mobile home park law today, the "Just Cause" law has been amended and revised out of existence so that presently mobile home law is roughly at the place where it was before "Just Cause" went into affect.

I ask that history will not repeat itself here in Montana.

R. Christopher Maedje

10 UNITS OR SMALLER

SENATE JUDICIARY COMMITTEE  
STAFF  
EXHIBIT NO. 25  
DATE 3-19-93  
FILE NO. HB 245

1. ~~The~~ Met w/ MPAC In MSLA - Feb 92  
Cecil Wambold, Vera Fischler & I Met  
Mar, April, May, Sept, Oct of 92  
Various Others Attended One Or More  
Mtg's
2. Mtg's Were Sched For Nov & Dec. MPAC  
Cancelled Them. They Did Not Want  
To Continue The Dialog.
3. This Bill Has Been Amended By Its Sponsor  
More Than 40 Times To Reach This  
Point. If We Had Had Those Mtg's, Most  
Of Those Am's May Not Have Been Needed.
- 4.

5. MHA Owners Can Now Be Brought Into Violation  
Of State Law Or Admin Rules By Tenant With  
No Recourse To The Tenant Except Eviction.

\$ 25 per day

To Summary  
Failure  
To Move & Turn

1. UNLICENSED DAY CARE UNINSURED  
WASHING ON SEPTIC SYSTEMS  
ABANDONED VEHICLES THAT PRODUCE  
INSPECT & RODENT HARBOURING  
BAD SKINZING - DIPA  
BAD SEWER CONNECTIONS  
NO NUMBERS ON M/H - FIRE DEPT.  
ANIMALS AT LARGE

\$ 500  
DEPOSIT  
15% REA  
MAYOR COUNCIL

THIS BILL MAKES THAT EVEN MORE DIFFICULT

Cecil Walborn, Manager Countryside Village MHP, Great Falls, MT.

It was mentioned that the Owner/Managers of mobile home parks are buying and selling homes of tenants, that are subjected to eviction but with no place to move. That the homes are being bought at 30 cents on the dollar of it's value. I find this hard to believe. In one incident the tenant was behind on the rent. A summons had been delivered. The management offered to buy his home to help him clear up his indebtedness, Yes it does appear that his home was bought at less than it's blue book value, but when you subtract what the indebtedness was and give to him the remainder that would indicate that the home was bought for less than it's value. This tenant had the right to accept or reject the offer. He was willing to accept the offer. This can be supported by the Owner/Manager, who are present at this committee hearing. There is also an incident in which we helped a tenant get his home sold to clear up his indebtedness on his back rent. He had actually abandoned the home. Neither was a case of coercion or a threat on the tenant, but that the tenant was willing to accept the offer. In Montana if you buy and sell more than three homes a year you must have a dealers license. We have just received our dealers license. So now we are able to sell the homes for those who want to sell and list their home with us. We have found that, in Great Falls, Missoula, Bozeman, Billings and Helena, the homes are selling fast and at a value above the blue book listing. In Great Falls the home owner can list his home in the paper and within a week the home is usually sold. The home owner has the right to sell his home the way he chooses. We as a dealer are offering a service in which we can sell the home for them, if they choose to use us. We can arrange financing for the buyer, do the advertising, and arrange a time to show the home. We do not buy the home, just sell them.

I do not believe we need a law giving the tenant more time than is already available to move, in the case of eviction or to correct a problem. A large percent of the time if the tenant would take the time to talk to the management an agreement can be made that would be workable for both parties.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 27

DATE 3-19-93

FILE NO. HB245

Billings, Montana  
March 18, 1993

Mr. Bill Yellowtail, Chairman  
Senate Judiciary Committee  
Capitol Station  
Helena, Montana 59620

SUBJECT: HB 245

Dear Mr. Yellowtail;

We strongly oppose House Bill 245 as it will create hardships on both tenants and landlords. It will force a lot of older individuals out of business if they have a lawsuit. Many of these people are subsidizing their income with a rental or two. If forced out of business the government will have to help them.

Each time a rental door is closed it makes it that much harder on the tenants to find a place to go. When there is a shortage of rentals the price of rent goes up. Each lawsuit will also raise the rents. So who gains? I think we all know as it sure isn't the tenant or landlord.

As to the fifteen day notice to change the use of the property so tenants can go in and testify against the landowner would be unconstitutional and would be taking owners rights away.

We do agree to the six months notice to vacate a court if there is to be a change in the property.

We do not have the shortage of rental spaces in the Billings area. We do not seem to have the problems that Missoula does or if we do they are very minimal.

Montana Legal Service Representatives agrees that there is about one percent bad landlords and tenants. So I ask why keep changing the laws and penalizing the rest. There is laws on the books now to take care of all the problems if they will just use them. Why keep taking up the legislatures time and costing the taxpayers right at \$2000.00 a bill to be processed.

I apologize to the legislature that we have to come up here each year to put down the same bills year after year.

Thank you for your time and consideration.

Sincerely,

*Mrs. Montana N. Watts*

Mrs. Montana N. Watts  
3455 Old Hardin Road  
Billings, Montana

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 28  
DATE 3-19-93  
BILL NO. HB245

Billings, Montana  
February 1, 1993

Mr. Steve Benedict, Chairman  
House Business and Economic Development  
Capitol Station  
Helena, Montana 59620

SUBJECT: HB245 & HB321

Dear Mr. Benedict and Committee:

We the tenants in the Glentana Mobile Home Court and R.V. Park  
do hereby oppose House Bill 245 and House Bill 321 for the following reasons:

- \* Our lives and property are at risk, when the owners of an Mobile/RV park cannot exclude or evict unsavory tenants as quickly as possible.
- \* 30 days is more than reasonable, to evict persons who are not paying their rent or acting in an irresponsible manner to the detriment of the court.
- \* Lawsuits and other costs of doing business raises expenses and causes landlords to raise rents and interferes with our spendable income.
- \* Rental agreements between landlord and tenant should be optional as to period of time and not force either party into a hardship by codifying length of time. Should a renter need to leave the court before the time was up...a penalty could be imposed under this house bill.
- \* These bills may cause hardships and shortages of mobile courts where tentants need to reside. Present laws are more than adequate and we must keep the number of mobile courts from diminishing.

Name of Tenants at 3455 Old Hardin Road, Billings, Montana. 59101

1 Veronica Lambert	18 Penny Carlson
2 Rachel Miller	19 Marge Storer
3 Jan Miller	20 Katherine B. Daniel
4 Deanne Refay	21 Ruth E. Beckman
5 Karen M. Little Light	22 Wamara L. Eldridge
6 David A. Johnson	23 The Johnsons
7 Robin Kelley	24 Marilyn Kercher
8 Jackie M. Kay	25 Maribel Tate
9 Fred M. Kay	26 Eva M. Allen
10 Lidia McKay	27 Ruben A. Rosales
11 Dick McKay	28 Robert S. Cushman
12 Valeria Noulhan	29 W. Rice
13 Bernice Norton	30 Lila Masters
14 Laurence Stenlin	31 Steve Weber
15 Mark Ward	32 Lloyd Lawrence
16 Cynthia L. Boff	33 Margaret Eldridge
17 Jack J. Keeney	34 Owen Larsen

Billings, Montana  
February 1, 1993

Mr. Steve Benedict, Chairman  
House Business and Economic Development  
Capitol Station  
Helena, Montana 59620

SUBJECT: HB245 & HB321

Dear Mr. Benedict and Committee:

We the tenants in the Glentana Mobile Home Court and R.V. Park  
do hereby oppose House Bill 245 and House Bill 321 for the following reasons:

- \* Our lives and property are at risk, when the owners of an Mobile/RV park cannot exclude or evict unsavory tenants as quickly as possible.
- \* 30 days is more than reasonable, to evict persons who are not paying their rent or acting in an irresponsible manner to the detriment of the court.
- \* Lawsuits and other costs of doing business raises expenses and causes landlords to raise rents and interferes with our spendable income.
- \* Rental agreements between landlord and tenant should be optional as to period of time and not force either party into a hardship by codifying length of time. Should a renter need to leave the court before the time was up...a penalty could be imposed under this house bill.
- \* These bills may cause hardships and shortages of mobile courts where tentants need to reside. Present laws are more than adequate and we must keep the number of mobile courts from diminishing.

Name of Tenants at 3455 Old Hardin Road, Billings, Montana. 59101

1 <u>Barbara L. Curtis</u>	18 <u>Joseph A. Hlawn</u>
2 <u>Robert J. Dunsen</u>	19 <u>Stamper</u>
3 <u>Theresa L. Brien</u>	20 <u>Cathy J. Mayer</u>
4 <u>Charles Brien</u>	21 <u>James Cassidy</u>
5 <u>Karen Kreis</u>	22 <u>Guadalupe Ma. Barry</u>
6 <u>James H. Wain</u>	23 <u>Dave Morris</u>
7 <u>Dale E. McPann</u>	24 <u>Chapelle M. Williamson</u>
8 <u>Eugene J. Jorenson</u>	25 <u>J. R. R.</u>
9 <u>Jack Ruff</u>	26 <u>Stacy Wymore</u>
10 <u>Mark Hope</u>	27 <u>William Adams</u>
11 <u>Lindy Lockyer</u>	28 <u>Ben Krell</u>
12 <u>Paul Brothers</u>	29 <u>Windy J. Hagerdick</u>
13 <u>Sharon Brothers</u>	30 <u>Arthur J. Hagerdick</u>
14 <u>Fay D. Balchack</u>	31 <u>Carrie Ruiz</u>
15 <u>Jim Boyer</u>	32 <u>Nick Hetherington</u>
16 <u>Timothy A. Baker</u>	33 <u>Wendy Hetherington</u>
17 <u>Ch. Stonelorge</u>	34 <u>Erica Hetherington</u>

# King Arthur Park

81 Gallahad Way  
Bozeman, MT 59715  
(406) 587-5151  
(406) 587-7361

I am against Bill (House) 245 because I feel it will tie the hands of the park managers, and cause the quality of environment that I now enjoy to be hampered. The residents of King Arthur Park pay a premium rent for a quality place to live, and we expect that the management will evict individuals in a timely manner if violations of the rules occur. We have a very strict book of rules that we signed when we bought our home, and placed it in this park. We expected that the rules would be followed, or eviction would occur. We also expected that our neighbors would also be held responsible to obey these same rules. Homes in King Arthur bring a premium when sold. If you choose to disregard the Majority to protect a few, I believe it would be a serious error.

J.V. Bragstad 96 Bedivere

Sarah J. Chandler 137 Tristram

Robert E. Chandler 137 TRISTRAM

Gould E. Ellet 185 Laurel

Rosie Campbell 163 Gawan way

Carla Dean 159 Gawan way

Loretta Lavideman 142 Gawan way

W.E. Wood 50 Merlin Dr.

Christopher Aasen 135 Tristram Dr.

Margaret M. Wood 50 Merlin

Phyllis A. Hunt 51 Merlin

James O. Hunt 51 Merlin Dr.

John #30 Bedivere

Monte Lynja 30 Bedivere

John 30 Bedivere

SENATE JUDICIARY COMMITTEE  
JAN 27  
3-19-93  
HB 245



DATE 3-19-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 245-Kadar H.B. 216-Grad  
H.B. 396-Whalen

Name	Representing	Bill No.	Check One Support Oppose	
Jacqueline Denmark	Am. Ind. Assoc.	HB 396		✓
Donell Gellan	MT Petroleum	HB 216		✓
Patrick J. Keller	Travis Res. Assoc.	245	✓	
Jerry Wolf	Quick Mart Stores	216	X	
Frank T. Grinn	Stocks Oil Co.	216	✓	
Clair Edgeway	Ores	216	✓	
BILL DERMOTT	Exxon Company, West.	216		✓
Marion Ryan	Oil	216	✓	
Steve Visser	Viscon Petroleum	216	✓	
Jim Ryan	Oil	216	✓	
Lester McBurne	M P A	245	✓	
Greg McBurne	M P A	245	✓	
Bob Blomgren	Eastgate Concrete	216	✓	
Dave Sutey	Sutey Oil Co	216	✓	
Robert Chaffee	do SERV 'N SAVE INC	216	✓	
John H. Hays	Two Bears		✓	

2010  
VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/19/93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 245 KADAS; HB 216 GRADY  
HB 396 WHALEN

Name	Representing	Bill No.	Check One	
			Support	Oppose
Wes Krawczyk	SELF			
Cate Campbell	Good Cause/MPA	245	✓	
Yeu Ayeing	Good Cause/MPA	245	✓	
Mike Sundine	Self			
Kory Rohy	Self			
Kevin Miller	self		✓	
Bill Olson	AARP	245	✓	
Anthony Daffy	MPA	245	✓	
Percie Jones	MPA	245	✓	
Hal Tremper	Self	216	X	
Steve Maulderville	Int Assoc Realtors	245		X
DAWN PETERSON	SELF	245	✓	
MICHAEL PETERSON	GOOD CAUSE / MPA	245	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 216, 245, 396

Name	Representing	Bill No.	Check One	
			Support	Oppose
SAM CUSNEY	MOONLITE AUTO	245	X	
ED Young	FRONTIER CONOCO	216	X	
Cleaves P. Price	Frontier Center	216	X	
Stacy Jaffe	Target Range C	245	X	
Susan Page	Target Range	245	X	
John H. Marshall	Travlers Residents Assoc	245	X	
W. D. Kinner	Moore Law & Assoc. P.C. Montana Service Corp.	245	X	
Bruce Hietala	Target Range Trl. Ct.	245	X	
Don Paskat	MPA	245	X	
Doris Van Thast	Trails Trails Court			X
Vin Fleischmann	MPA	245	X	
Tim Sweney	Clds	245	X	
Benson Alexander	MT Petroleum Marketers	216	X	
John Wymen	Great Falls MHC Residents	245	X	
Robert Dunlops	Helena Mt	245		X
Bob Christensen	Zolo Mt	245	X	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 216, 245, 396

Name	Representing	Bill No.	Check One Support Oppose
Judy Little	2128 So. Higgins Hamp. Conn. MS/6	HB 216	✓
Larry D Little	2125 So. Higgins Hamp. Conn. MS/6	216	✓
Billie F. Daggart	Compco TRAVEL Shop at 4 corners	216	✓
John D. Daggart	" " "	216	✓
Larry Maki	15 <sup>th</sup> St. Cnry Gt Falls	216	✓
Loren Ronville	Weston Exxon Gt Falls	216	✓
CARI HALORO	CARI'S EXXON G.F.	216	✓
Mike Peterson		216	✓
<del>Sam Dillingham</del>	<del>Sam Dillingham</del>	216	✓
Pam Dillingham	" " "	216	✓
C.D. Seiler	" " "	216	✓
Mary Dillingham	" " "	216	✓
David + Cathie Hyguenin	HB 245 Good Cause	245	✓
Don Self	2995 pros such	245	<del>✓</del> <del>○</del>
Juan Goble	Montana Health Services	245	✓
Lynn Fragua	Ronan, Mt.	245	✓

### VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-19-93

SENATE COMMITTEE ON

H.B. 216 (JUDICIARY)

BILLS BEING HEARD TODAY:

HB 245, HB 396

Name	Representing	Bill No.	Check One Support Oppose
Mark R. Olson	Olson Inc.	216	X
Thomas L. Whinn	Stockton Oil Co	216	X
Alice Janko	Lexley Acres	245	X
Nancy Lanning	Borgman M.H.C. Assoc	245	X
Christine Pry	99 Frank Rd #49 La Porte	245	X
Ron Murphy	Transit Village Res. Assn	245	X
Riley Johnson	NFIG	216	X
Bill Stevens	Mt Food Dist Assn	216	X
Clara Kinner	Self	216	X
Larry Farber	Mt. Council of Coops	216	X
Lerna Frank	Mt. Farm Bureau	216	X
JUDITH H CARLSON	HRDC Dir Assn	245	X
Montana Co. Utility	Power -	245	X
Patricia Baldwin	Billings, Blain's Court	245	X
Dennis McCall	Billings	245	X
Ed Eaton	T-L Court	245	X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-19-93

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

HB 245, HB 216, HB 396

Name	Representing	Bill No.	Check One Support Oppose	
Craig Draper	Forest Park	245		✓
James Draper	Forest Park	245		✓
John Arrish	Missoula Village West <del>HB</del>	245	✓	
Janet Salmonson	Westview Trailerpark	245		
Vienna Kessner	Great Falls, MT	245		✓
Kit Hodge	Mt Fall M	245		✓
Dorothy Schmitt	Mt. Falls, MT	245		✓
Ann K. Fischer	G.F. MT.	245		✓
Carla Torgerson	Mont. Stockgrowers Assn	216		✓
Ronda Carpenter	INOWN Hop Growers <sup>Assoc</sup> MT	245		✓
Chad Macee	Township Village <sup>MTA</sup>	245	✓	
Karen Schmitt	Green View T. Mt	245	✓	
Sammy Reynolds	Missoula Village West	245	✓	
TERRY LANQUEST	MISSOULA VILLAGE WEST	245	✓	
ALICE FAY	MISSOULA T. MT	245		
William R Nooney	HI-NOON Petroleum MSO, MT	216	FOR	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-19-93SENATE COMMITTEE ON JUDICIARYBILLS BEING HEARD TODAY: H.B. #25  
245 HB 216, HB 394

Name	Representing	Bill No.	Check One	
ANDY SKINNER	LIFESTYLE HOMES	245		✓
Lee Reynolds	MOBILE CITY	245		✓
Jerry Swenson	Ledy Acres	245		✓
Frank Ahorn	Home Rentals	245		✓
Dan Wood	MT. LANDLORDS	245		✓
Leon Hoggan	MT. ASSOCIATION	245		✓
Cheryl Burpee	self, tenants of MT	245	✓	
Mike Burpee	self, tenants of MT	245	✓	
Dan Shea	A Citizen's Point of View	245	X	
RICK MAEDIE	self	245		✓
Bea Steen	self / MPT	245		✓
Carl Walbran	IPM's	245		✓
James Rush	Conestoga Bridge View	245		✓
Jon Aderson	Forest Park Windsor	245		✓
Wicky Warrant	Forest Park	245		✓
Be Wilson	Forest Park	245		✓

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 216, 245, 396

Name	Representing	Bill No.	Check One	
			Support	Oppose
<i>Nanci Bartlett</i>	<i>Missoula</i>	<i>243</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Pat Engstrom</i>	<i>2nd Falls</i>	<i>245</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Melissa Case</i>	<i>Helena/MPA</i>	<i>245</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Kathy &amp; Z...</i>	<i>Donna Lindberg agent T.P.M. Assoc. Inc.</i>	<i>245</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Greg Van Huisen</i>	<i>State Farm Ins</i>	<i>396</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Kenneth Mohland</i>	<i>TRAVIS-Mela</i>	<i>245</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Ron Abraham</i>	<i>State Farm Ins</i>	<i>396</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



DATE 3-19-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 216, 245, 396

Name	Representing	Bill No.	Check One	
			Support	Oppose
Douglas J. Salinger	MT. Peoples Action	245	X	
Ind P. Gayland	self	245	X	
Stephen K. Wells	M.P.A.	245	X	
ALICE FOX	M.P.A.	245	X	
Reverie Jones	MPA	245	X	
Janet Gabel	MPA	245	X	
Scott Turner	MPA	245	X	
Mary Schmitt	TRAVOS VILLAGE	245		✓
STAN CROTHIER	MONTANA LANDLORDS	245		✓
Debie Kain	TRAVIS VILLAGE	245		✓

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY